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MACKENZIE VALLEY PIPELINE INQUIRY

Government  
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF  
(a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A  
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS  
CROWN LANDS WITHIN THE YUKON TERRITORY AND  
THE NORTHWEST TERRITORIES, and  
(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY  
THAT MIGHT BE GRANTED ACROSS CROWN LANDS  
WITHIN THE NORTHWEST TERRITORIES  
FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND  
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,  
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE  
PROPOSED PIPELINE

(Before the Honourable Mr. Justice Berger, Commissioner)

Yellowknife, N.W.T.

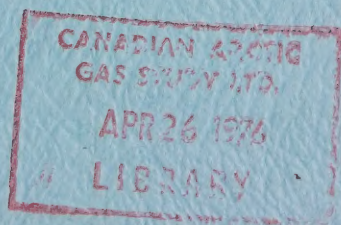
April 15, 1976

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PROCEEDINGS AT INQUIRY

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Volume 144





Mr. Ian G. Scott, Q.C.,  
Mr. Stephen T. Goudge,  
Mr. Alick Ryder and  
Mr. Ian Roland for Mackenzie Valley Pipeline Inquiry;

Mr. Pierre Genest, Q.C.,  
Mr. Jack Marshall,  
Mr. Darryl Carter and  
Mr. J.T. Steeves for Canadian Arctic Gas Pipeline Limited.

Mr. Reginald Gibbs, Q.C.,  
Mr. Alan Hollingworth and  
Mr. John W. Lutes for Foothills Pipe Lines Ltd.;

Mr. Russell Anthony,  
Prof. Alastair Lucas and  
Mr. Garth Evans for Canadian Arctic Resources Committee;

Mr. Glen W. Bell and  
Mr. Gerry Sutton for Northwest Territories Indian Brotherhood, and Metis Association of the Northwest Territories;

Mr. John Bayly and  
Miss Leslie Lane for Inuit Tapirisat of Canada, and The Committee for Original Peoples Entitlement;

Mr. Ron Veale and  
Mr. Allen Lueck for The Council for the Yukon Indians;

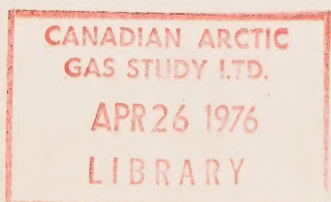
Mr. Carson Templeton for Environment Protection Board;

Mr. David H. Searle, Q.C. for Northwest Territories Chamber of Commerce

Mr. Murray Sigler for The Association of Municipalities;

Mr. John Ballem, Q.C. for Producer Companies;

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Yellowknife, N.W.T.

April 15th, 1976

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BELL: I think we're ready to proceed with Mr. Sander's evidence, sir.

DOUGLAS E. SANDERS, resumed:

DIRECT EXAMINATION BY MR. BELL (CONT INUED):

A Thank you Mr. Bell, Mr. Commissioner. It's a pleasure to be here.

The purpose of my evidence is to examine the question of the relationship of non-traditional land use projects like the proposed pipeline to aboriginal title claims. To do this, I have re-examined some of the background to such claims in English legal thought and I have briefly discussed in my written paper some of the variant systems that have been used within English colonial<sup>legal</sup> traditions as responses to aboriginal title claims.

The purpose of this background information and this comparative information is to try to establish what types of property systems or property regimes might come into place in response to aboriginal title claims.

Finally, I will comment on the relationship of a major non-traditional land use project such as the pipeline to the claim. Is it possible at this point really, as the part of the question I will raise, to clearly understand what that relationship will be.

Initially, I want to state the



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In Chief

1 major limitation to my evidence. It's logical for  
2 indigenous groups to raise a series of questions in  
3 response to the fact of colonial settlement in their  
4 lands. To list some, the basic question of political  
5 sovereignty, questions of the legal survival of in-  
6 digenous customary law, questions of real property  
7 rights, questions of human rights, questions of economic  
8 rights.

9 My evidence is confined to  
10 the colonial legal system.

11 THE COMMISSIONER: Excuse me  
12 Mr. Sanders. I didn't notice, Mr. Hollingworth isn't  
13 here.

14 MR. SIGLER: He just went out  
15 to get some papers that he had forgotten. He'll be right  
16 back.

17 THE COMMISSIONER: Oh, and  
18 Mr. Bayly isn't here either. We better not have any  
19 more night sittings.

20 MR. SCOTT: Mr. Bayly's at a  
21 meeting apparently so he's not at home.

22 THE COMMISSIONER: Well, we'll  
23 carry on then. Mr. Hollingworth is --

24 MR. STEEVES: I'll cover for  
25 Mr. Hollingworth.

26 THE COMMISSIONER: Go ahead.  
27 Sorry.

28 A I'm saying my evidence  
29 is confined to the colonial legal system. In Canada,  
30 that system has denied full or formal legal sovereignty



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to the native tribes to the degree that it has recognized indigenous rights. It has almost exclusively tried to define these rights in property terms. I am not concerned in my evidence with commenting on the rightness or wrongness of that fact. I am not speaking of the views of indigenous groups about colonial assumptions. I am commenting on the ideas and responses of the colonial legal system itself and nothing more.

It's not my intention Mr. Commissioner to read my paper in full. If it's acceptable to the Commission, I will summarize portions of it and read other portions of it that present the basic argument in it, I think, intact.

The first section of the paper deals with English law and the acquisition of new territories. There developed in English legal thought in the 17th and 18th century a framework relating to the acquisition of new territories. It classified colonies or territories or plantations in which England had assumed jurisdiction into three categories. Those acquired by occupation or settlement. Secondly, those acquired by conquest. Thirdly, those acquired by cession.

In relation to cession, this is a reference to treaties or agreements of cession which are concerned with sovereignty such as the Treaty of Waitangi in New Zealand in 1840. It was not understood by the term what we know in Canada as the Land Cession Treaties which purport to deal with property rights rather than dealing with sovereignty.. The only treaties



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1 in Canada which I am aware of which have any explicit  
2 content on the question of sovereignty are the early  
3 treaties in the Maritime provinces in the 18th century.

4 MR. BELL: Excuse me Mr. Sanders,  
5 perhaps for those who are trying to follow in your  
6 written testimony, you could indicate where you're  
7 summarizing and where you're reading direct from the  
8 paper.

9 A I will do that. I'll  
10 indicate when I am reading from the paper and at what  
11 page.

12 The concept of conquest appears  
13 in English legal thought to have required military activity  
14 in the area in which the acquisition by conquest was  
15 to have taken place. The concept of discovery was used  
16 by England to give rights to acquire but appears not to  
17 have been considered by England to itself have been a  
18 method of acquisition of a new territory.

19 THE COMMISSIONER: Excuse me,  
20 did you say discovery?

21 A Discovery. The classic  
22 statement in English law on the methods of acquisition  
23 of new territories appears to be that of Blackstone in  
24 1765 in his Commentaries on the Law of England. This  
25 quotation is reprinted in the paper on the first page  
26 and I'll read it.

27 "Plantations or colonies in distinct countries are  
28 either such where the lands are claimed by right of  
29 occupancy only, by finding them desert and uncultiva-  
30 ted and peopling them from the mother country; or



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1 where, when already cultivated, they have been  
2 either gained by conquest or ceded to us by  
3 treaties and both these rights are founded upon the  
4 law<sup>of</sup> nature or at least upon that of nations. But  
5 there is a difference between these two species of  
6 colonies with respect to the laws by which they  
7 are bound.

8 For it hath been held, that if an uninhabited  
9 country be discovered and planted by English  
10 subjects, all the English laws then in being which  
11 are the birthright of every subject, are immediately  
12 there in force. But this must be understood with  
13 very many and very great restrictions. Such  
14 colonists carry with them only so much of the  
15 English law as is applicable to their own situation  
16 and the conditions of an infant colony.

17 But conquered or ceded countries that have  
18 already laws of their own, the King may indeed alter  
19 and change those laws, but till he does actually  
20 change them, the ancient laws of the country  
21 remain unless such are against the law of God as in  
22 the case of an infidel country."

23 The distinction between "infidel  
24 countries" or "pagan countries" and Christian countries  
25 which is mentioned here is one which is terminated in  
26 English legal thought well before the judgement in  
27 Campbell and Hall in 1774 and is commented on to that  
28 effect in that judgement.

29 As the quotation from Blackstone  
30 indicates, and I'm now moving on really to page three of



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1 the paper, there are three basic methods of acquisition  
2 of territories. Occupation and settlement as a method  
3 of acquisition of territory assume that the territory  
4 was unpopulated. English settlers, acquiring and  
5 settling in the area took English law with them and it  
6 applied fully there because there was no other legal  
7 system which could apply. In English thought, there was  
8 some other consequences and in a colony acquired by  
9 occupation and settlement, English Parliament -- the  
10 Imperial Parliament had legislative jurisdiction.  
11 In contrasting situations of conquest or cession, since  
12 these were prerogative acts, these involved prerogative  
13 acts of the English Sovereign. There was an initial  
14 prerogative legislative power in the English crown to  
15 legislate directly for these new territories without  
16 going through the Imperial Parliament.

17 In the situations of conquest  
18 and cession, the change of sovereignty was clearly  
19 held not to alter existing<sup>law</sup> or existing property rights.  
20 They could be altered by the new sovereign but the  
21 change of sovereignty itself did not have that effect.

22 If North America was to be  
23 treated -- here I'm beginning in the middle of page four  
24 -- If North America was to be treated as acquired by  
25 occupation or settlement, there had to be some explanation  
26 about the existence of native tribes on this continent.  
27 If it was acquired by conquest or cession, then legally,  
28 the pre-existing legal order would continue and would  
29 continue to be recognized by the new sovereign unless  
30 changed. If the existing legal order continued then



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In Chief

1 obviously Indian property rights, in conformity with it,  
2 would continue through the period of change of sovereignty  
3 and be recognized by the new legal order until explicitly  
4 changed.

5 English law however defined  
6 North America as having been acquired in relation to  
7 the native population by occupation and settlement and  
8 this presumed that the lands were uninhabited. I'd like  
9 to quote the upper part of page 5. I've quoted a couple  
10 of statements from English legal texts, the first in  
11 1780, the second, Sir George Cornwall Lewis's book in 1841:

12 "When the dependency is a colony of the dominant  
13 country which settled in an uninhabited district,  
14 or which has reduced the native population to a  
15 condition of slavery, or has completely absorbed them  
16 into its own body as was the case with the Greek  
17 colonies on the coast of the Mediterranean, -- "  
18 and this is the significant portion,

19 "or which has expelled or exterminated the aborigin-  
20 al inhabitants as has been done by the Spanish and  
21 English colonies in America and Australia, there  
22 is a general agreement between the laws of the  
23 mother country and the dependency, and the mother  
24 country has no inducement to disturb the laws of  
25 the dependency."

26 Either Mr. Lewis was completely  
27 ignorant of the situation in North America or he was  
28 asserting a legal fiction that the aboriginal population,  
29 in law, ceased to exist. This denial of the very  
30 existence of indigenous populations took legislative



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1 form in 1858 by the Imperial Act which created for the  
2 first time colonial government on the mainland of  
3 British Columbia. The preamble of that statute reads,  
4 and this is quoted on page five of my paper:

5 "Whereas diverse of her Majesty's subjects and  
6 others, have by the license and consent of Her  
7 Majesty resorted to and settled on certain wild  
8 and unoccupied territories on the northwest coast  
9 of North America, commonly known by the designation  
10 of New Caledonia and from and after the passing of  
11 this act to be named British Columbia."

12 (QUALIFICATIONS AND EVIDENCE OF DOUGLAS E. SANDERS  
13 MARKED EXHIBIT # 569)  
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In Chief

1 This is very odd in some ways.

2 THE COMMISSIONER: It is no  
3 longer unoccupied. Don't let me interrupt you, Mr.  
4 Sanders.

5 A It literally means that  
6 you acted for certain non-existent clients at an  
7 earlier point in your career, Mr. Commissioner.

8 This could not be taken in  
9 any sense to have been a statement of fact. The  
10 legislation in 1870 -- in 1858 repealed as far as  
11 British Columbia was concerned Imperial legislation of  
12 1802 and 1821 which it included that area within what  
13 is termed "the Indian territories". The colony of  
14 Vancouver 's Island had been established since 1849,  
15 so there was clearly an English presence and English  
16 knowledge of the area. This reasoning has also occurred  
17 in relation to Australia, and on page 6 of my paper I  
18 refer to the case, Cooper v Stuart, decided in 1889  
19 by the Judicial Committee of the Privy Council. This  
20 is a reception of law case from New South Wales and  
21 in it -- and I'll just quote the second quotation in  
22 the middle of the page, Lord Watson stated:

23 "that the colony consisted of attractive  
24 territory practically unoccupied without  
25 settled inhabitants or settled laws."

26 Now that case did not directly deal with aboriginal  
27 rights.

28 In 1971 in the Milirrpum  
29 case which was an aboriginal rights case from the  
30 Northern Territory of Australia, the Supreme Court of



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1 the Northern Territory ruled that it was bound by the  
2 1889 decision of the Judicial Committee of the  
3 Privy Council of Australia was a settled colony. Mr.  
4 Justice Blackburn was careful to point out that this  
5 was a legal classification.

6 If you go to the portion of  
7 the quotation on the top of page 7, perhaps I'll just  
8 summarize the earlier part, the counsel for the abori-  
9 ginals said that the statement in <sup>the</sup> 1889 case that it  
10 was not -- that there were no settled inhabitants and  
11 no settled law were in fact inaccurate and that the  
12 evidence in the case itself had shown very complex and  
13 detailed patterns of occupations and settlement, and of  
14 law. Mr. Justice Blackburn dismissed that argument and  
15 he says in the middle of the quotation, as it appears  
16 on the top of page 7:

17 "The question is not one of fact but one of  
18 law."

19 The logic of English colonial  
20 thought led necessarily to the alternative conclusion  
21 that the aboriginal occupations of Australia and North  
22 America either did not exist in law or that their  
23 ownership of the land survived the change of sovereignty  
24 which established England as the political master of  
25 the area. To avoid the strict logic of these alterna-  
26 tives certain modifications of theory occurred. On  
27 the middle of page 7 I begin to examine three of  
28 these modifications.

29 The first is the suggestion that  
a country is uninhabited if there is no settled political



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1 order if there's no local law. Sir Henry Jenkyns,  
2 writing in 1902 stated:

3 "The colonies differ according as they have  
4 been acquired by settlement or by conquest or  
5 cession, and the Courts of law have sometimes  
6 been called upon to decide whether a colony  
7 was a settled or a conquered colony. The  
8 distinction appears to depend at the time of  
9 the acquisition of the territory upon whether  
10 at the time of the acquisition of the territory  
11 there existed on that territory a civilized  
12 society, <sup>with</sup> civil institutions or laws, whether  
13 in fact there existed anything which could be  
14 called a *lex loci*."

15 I then quote a couple of the statements from the  
16 Judicial Committee's decision In Re Southern Rhodesia,  
17 which says in the quotation at the top of page 8:

18 "There are indigenous peoples whose legal  
19 conceptions, though differently developed, are  
20 hardly less precise than our own. When once  
21 they have been studied and understood they are  
22 no less enforceable than rights arising under  
23 English law."

24 The obvious, to drop down to  
25 the bottom of this page 8, the obvious danger with this  
26 approach is that native rights are dependent upon the  
27 culture bound perceptions of Europeans. Colonial  
28 settlers, anxious to acquire land, are not likely to  
29 be interested in learning the indigenous system of  
30 land laws, to recognize that such a legal system exists



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1 in itself is to admit a possible constraint on settler  
2 acquisition of land. I suggest that it is unacceptable  
3 today to dismiss the Indian and Inuit peoples of the  
4 Northwest Territories as "uncivilized" or as -- and to  
5 quote from the Judicial Committee of the Privy Council  
6 in In Re Southern Rhodesia:

7 "So low in the scale of social organization  
8 that their usages and conceptions are not to  
9 be reconciled with the institutions of the  
10 legal ideas of civilized society."

11 I suggest that the testimony  
12 of Dr. June Helm and Professor Beryl Gillespie before  
13 Mr. Justice Morrow in the Paulette case would seem to  
14 be conclusive on the basic point that there was a  
15 comprehensible system of land ownership among the native  
16 people of the Northwest Territories, a system which  
17 has not been abandoned during the post-contact period.  
18 I understand that there will be evidence called at the  
19 land use study which is being prepared, which I assume  
20 would relate rather well to the anthropological evidence  
21 of these two expert witnesses.

22 The second revision of  
23 English colonial thought on the acquisition of new  
24 territories was to classify lands as owned only if they  
25 were permanently used as living sites or areas of  
26 cultivation. All other lands were deemed to be waste and  
27 deemed to automatically become unencumbered Crown lands  
28 on the assumption of sovereignty by England. There  
29 are a number of references to this in the Blackstone  
30 quotation which I began with. He does refer to lands as



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1 being both "desert and uncultivated" as if the two  
2 necessarily go together. He does not in his statement  
3 include a category for hunting tribes.

4 At the bottom of the page,  
5 the answer to this argument in Canada seems quite clear.  
6 Our modern law of native rights is largely built on the  
7 Royal Proclamation of 1763 and that document recognized  
8 Indian rights to hunting territories explicitly, and  
9 I quote from the document to that effect; and the  
10 treaties which followed the Royal Proclamation clearly  
11 recognized hunting territory. The pattern of a recogni-  
12 tion limited to intensively used areas in the years  
13 after 1763<sup>was</sup> only followed in British Columbia where  
14 Indian policy had different origin than in the treaty  
15 areas of Canada.

16 The third revision of English  
17 colonial thought was one which really alters the concepts  
18 which have been used up until that point. Essentially  
19 I suggest it involves a misuse of the term "discovery",  
20 a reinterpretation of the<sup>concept of</sup> conquest, and a distortion of  
21 the impact of conquest on the existing legal order.  
22 In Johnson v McIntosh, Chief Justice Marshall of the  
23 United States Supreme Court invoked "conquest" to settle  
24 the questions of the acquisition of North America and  
25 the ability of the legal system of the United States to  
26 now determine the existence and extent of Indian rights.  
27 His key reasoning, and I quote at the bottom of page  
28 10, says:

"However extravagant the pretension of converting  
the discovery of an inhabited country into



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In C hief

1 conquest may appear, if the principle has been  
2 asserted in the first instance and afterwards  
3 sustained, if the country has been acquired and  
4 held under it, if the property of the great  
5 mass of the community originates in it, it  
6 becomes the law of the land and cannot be  
7 questioned."

8 Dropping down to the middle of  
9 the page, Chancellor Kent in his commen\_taries largely  
10 rephrases Marshall in saying that:

11 "The practice of treating with Indians for  
12 their land was founded on the pretension  
13 of converting the discovery of the country  
14 into a conquest."

15 It appears that there is --  
16 that the conquest reinterpretation, as I've called it  
17 in this section of the paper, is largely something that  
18 developed in the United States. Earlier in our history  
19 in Canada it was something of a matter of national  
20 pride that in relation to the Indians this country had  
21 not been acquired by conquest. Now this was often  
22 asserted in a rather parochial way to assert that the  
23 traditions here on Indian policy had been much better  
24 than the practice in the United States. I think that  
25 prevented really an acceptance of a conquest reinterpret-  
26 ation of the acquisition of Canada in this country.  
27 It's rather interesting that Chief Justice Tasquin  
28 in a quotation at the top of page 12 refers to the  
29 "half truth of colonies by settlements," acknowledging  
the ambiguity in the Canadian tradition.



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1                   Even if Canada were now to be  
2 held to have been acquired by conquest, we would still  
3 have to search back to find actions of the new sovereign  
4 after conquest terminating Indian rights. The reinter-  
5 pretation only seems to bring us to the major issue  
6 discussed by the Supreme Court of Canada in the Calder  
7 case, that is what actions of the sovereign constitute  
8 a termination of Indian rights?

9                   On page 13 I note one other  
10 matter in relation to survival of legal rights from  
11 the pre-contact of the period before which England  
12 acquired sovereignty. It should be noted that there  
13 have been native law questions in Canada other than those  
14 relating to what we normally include within the terms,  
15 "aboriginal title" or "aboriginal rights".

16                   They have related primarily to  
17 customary marriages and customary adoptions. The  
18 adoption cases are basically exclusively in this  
19 jurisdiction of the Northwest Territories. Customary  
20 adoptions have been upheld by the Court of Appeal of  
21 the Northwest Territories on the basis that custom is  
22 a traditional source of law in common law tradition.  
23 This resolution of the issue involved no departure  
24 from English common law concepts. Most of the decisions  
25 in relation to customary marriages have also been  
26 argued within the framework of English law. One  
27 exception, the marriage case of Connolly v Woolrich, though  
28 somewhat ambiguous on the point, appears to have  
29 recognized a customary lex loci in the Northwestern  
Territory prior to the introduction of English law



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1 into the area, the particular area was part of the  
2 Mackenzie drainage, part of what is now the Province  
3 of Alberta.

4 My conclusion on this section  
5 is at the bottom of page 13.

6 English legal thought on the  
7 acquisition of new territory appears at first promising  
8 as a framework within which native rights in North  
9 America can be understood, and there is a recent paper  
10 that I've mentioned by Professor Brian Slattery which  
11 cited in the summary of my evidence which argues ex-  
12 clusively from the English rules on the acquisition of  
13 territories.

14 In my impression, the promise,  
15 however, fails, and we are led into fruitless paths  
16 such as the preposterous distinction between law and  
17 fact which led the Supreme Court of the Northern  
18 Territory in Australia in 1971 to declare that Australia  
19 had been unoccupied. Alternatively, it leads us to  
20 recasting the history of the acquisition of Canada into  
21 one of conquest, an analysis which we have traditionally  
22 rejected.

23 In the second portion of this  
24 paper I suggest an alternative approach to the question  
25 of native rights, which I suggest is more in harmony  
26 with what in fact <sup>has</sup> happened in this jurisdiction histori-  
27 cally. I suggest in the first couple of pages of this  
28 section, pages 14 and 15, that English colonial thought  
29 in relation to North America did not begin with any  
30 concept of native policy. One of the reasons for this



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which I certainly had overlooked until recently, was the fact that in the English colonial enterprise the system was very extensively decentralized. The interests of England were primarily colonial, were primarily commercial, and it was only in relation to trade that England early asserted very strong centralized authority over the colonies and plantations. Native policy was in fact left basically and exclusively to the local colonial authority in the particular area.

This altered and it altered in response to experience and it altered in the years leading up to the Royal Proclamation of 1763. Now on the bottom of page 15 I note the major events in that particular period.

English policy on Indian questions in North America was centralized by the Imperial Government in the years leading up to the Royal Proclamation of 1763. The major events were the Albany Congress of 1754, the centralization of Indian affairs and the military in 1755, the creation of the two Indian superintendencies in 1756, the instructions to the colonial governors in 1761, the Belcher Proclamation applied in the Maritimes in 1762, and the Royal Proclamation of 1763.

The centralization meant for the first time, a uniform English approach to Indian questions in North America. Because it was designed to placate Indian unrest promoted by expanding European settlement, the policy recognized aboriginal land rights. The development of the policy arose as a practical response



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to particular situations. It was not an extension of pre-existing theory, though there had been some earlier recognition of Indian land rights in New England.

I suggest that it was in the manner of the early common law; there were particular patterns of practice which were established in response to the realities of the situation. The practice became supplemented by formal political and legal decisions, and judicial decisions further supplemented the general legal framework. I then cite -- quote from the judgment of Mr. Justice Strong in the Supreme Court of Canada in the St. Catherine's case. It is essentially the same kind of argument.

I turn now to page 17 at the end of those quotations. The earliest formal recognition of Indian rights in what is now Canada occurred in the <sup>context of</sup> conflicts between the colonial powers. Provisions protecting Indian allies occurred in both the Treaty of Utrecht in 1713 and the Articles of Capitulation of Montreal in 1760. The latter provided that the Indian allies of France would be, "maintained in the lands they occupy if they wish to remain there."

It was the Royal Proclamation which marked the watershed. Alpheus Snow takes the peace of 1763 as "the beginnings of the modern law on the subject" of the legal rights of aborigines. I suggest that in Canada <sup>the</sup> date marks a major division between the perception of Indians as allies and the acknowledgment of Indians as landowners.

I suggest in the next few



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1 paragraphs that the real roots are the Marshall  
2 decisions in the United States in the early part of  
3 the 19th century, and equally the St. Catherine's case  
4 in relation to Canada was not an English theory on  
5 the acquisition of new territory; it was rooted really  
6 in the practice which developed in North America.

7 Chief Justice Marshall spends  
8 a fair amount of time, particularly in the judgment  
9 of Worcester v Georgia examining the earlier grants  
10 to the colonies in New England and the practice that  
11 developed in that area. I suggest at the bottom of  
12 page 18, the final resolution of the St. Catherine's  
13 case by the Judicial Committee of the Privy Council  
14 made it clear that in Canada the law of native rights<sup>x</sup> would  
15 be based on colonial experience in this area. That has  
16 continued to be true in the decision since the St.  
17 Catherine's case, the Calder decision while inconclusive  
18 on the survival of Indian title in British Columbia,  
19 clearly served to counter any tendency to rigidly and  
20 exclusively focus simply on the Royal Proclamation as  
21 the source of aboriginal title claims in Canada, and in  
22 the Paulette case, the historical and legal experience  
23 in the Mackenzie District was found in the Indian  
24 provisions of the doctrines transferring Rupert's Land in  
25 the Northwestern Territory in Canada, and the James Bay  
26 litigation in Quebec, the<sup>Quebec</sup> Boundaries Extension Act of  
27 1912 served a similar function. So these various cases  
28 in different parts of the country are all rooted back  
29 into legal documents of the colonial history of the  
30 particular area.



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My conclusion is stated on page 21. Judicial recognition of aboriginal rights has occurred in those jurisdictions where there has been a history of <sup>some</sup> recognition of aboriginal rights in practice. The major decisions in the United States, Canada, New Zealand and Africa, while not deriving simply from acts of recognition, derive from historical context in which there was some recognition. Judicial decisions represent a codification and extension of practice. Because the process involved is similar to that of early common law, it seems appropriate to speak of a common law of native rights based on colonial practice.

The next section of my paper, which begins on page 22, addresses itself to different legal regimes or property regimes which have in fact come into being in different areas which have been subject to English colonial jurisdiction. I suggest that there are two basically distinguishable systems as responses to aboriginal title claims. The first involves land cession treaties or other large-scale terminations of native interests, and as part of the land cession treaties creation of reserves or native allotment, or some other form of smaller scale land ownership or land use rights to the indigenous population.

We are familiar with this because basic form ' we see it in North America as the norm.

The second, and this is my term, I refer to as a system of recognition and conversion of native title. I suggest we are unfamiliar with this largely because it's occurred elsewhere than North



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America. The system in New Zealand, largely the system in Oceania and parts of Africa.

The first sub-section on page 22 deals with land cession treaties, and there is perhaps one point that I would like to mention in relation to that. It appears to me that the history of treaties in Canada from the Royal Proclamation down to the present undergoes a considerable evolution. There were in the years immediately following <sup>the</sup> Proclamation a series of treaties and surrenders in what is now Southern Ontario. There are a great number of these documents, and most of them deal with relative terms of looking at the whole history, in terms of relatively small areas of land and relatively small populations of Indians. The pattern there is roughly similar to the pattern of the early treaties on Southern Vancouver Island negotiated by Governor Douglas as chief factor of the Hudson's Bay Company. Again it is relatively small areas, relatively small populations of Indians.

The scale of the treaties expands very significantly with the two Robinson Treaties of 1850 which deal with the watershed of Northern Lake Superior and Lake Huron in Ontario, north to the watershed of the Hudson's Bay; and then the first two of the Federal Treaties, Treaties 1 and 2 negotiated in Southern Manitoba in 1871, they are considerably larger than the previous treaties which were negotiated in Southern Ontario, but the geographical scale of the first three treaties of the Federal Government, 1, 2 and 3, was immediately dwarfed by the next series, series



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1     Treaties 5 to 7 between 1875 and 1877. There is then  
2     a 22-year gap between the final of those treaties and  
3     Treaty 8 in 1899 and it seems significant that three  
4     of the final treaties, 8, 9 and 11, are clearly by far  
5     the largest in Canada and I think 'vastly larger than  
6     any of the treaties negotiated in the United States.  
7     Clearly the treaty process changed<sup>very</sup> dramatically from  
8     that followed in Southern Ontario and Southern Vancouver  
9     Island. I suggest that the reason for this quite  
10    dramatic alteration was probably the increased confidence in  
11    centralized legal and governmental structure created  
12    in Canada by the colonial process, and the increasingly  
13    weaker political position of the tribes as colonialism  
14    moved further west and further north.

1                   The Prairie Treaties, parti-  
2     cularly in the more westerly areas of the fertile belt,  
3     were negotiated in periods of near desperation for  
4     the Indian tribes, with the traditional economic order  
5     obviously disintegrating from forces beyond Indian  
6     control. I suggest that the Indian leadership had  
7     little choice but to accept the offers of the govern-  
8     ment commissioners to treat the Indians as "children"  
9     subject to the benevolence of the "great white mother".



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I suggest that the Indian treaties of the fertile belt can only be understood in the context of the crisis which the prairie tribes were experiencing in the period. Their political bargaining power had largely been destroyed. In the negotiations, they asked among other things for relief in times of famine for that was what was facing them.

I'm reading now on page 24. It is a commentary on the character of government in both the United States and Canada that many of the agreements with native groups have been negotiated in an atmosphere of crisis or significant political pressure.

The Alaska settlement, I suggest cannot be seen outside of the political context of major resource development. The settlement bears many of the marks of a forced compromise. The basic question of land selection was left to be worked out after the legislative settlement was in place.

It's my impression that if the natives of Alaska have felt betrayed on any single element of the settlement, it is on the question of land selection and the basic question of entitlement although the formula had been worked out, implementing that formula, that had been left to be worked out after the legislative scheme was in place, and as the Commissioner is probably quite aware, there have been protracted problems particularly with the 13th corporation for nonresident Alaska natives.

I saw something on that very recently. They think that that question is still not



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settled. I suggest that the James Bay agreement also shows the marks of a settlement negotiated under pressure. Mr. John Ciacca the chief negotiator for the province of Quebec stated publicly that if the communities, the native, Inuit and Indian refused to approve the agreement in the referendum, the project would go ahead anyway and the native people would have lost the benefits of the agreement. It was a direct parallel to statements of government commissioners in the treaty period stating that even if the Indians did not sign the treaty, whites would enter the area in any case.

It is suggested that in spite of certain clear differences, the Alaska and James Bay settlements are in the basic tradition of the Indian land cession treaties. They are not examples of systems of recognition and conversion of native title.

I'll now go on to talk about systems of recognition and conversion of native title. These involve a recognition of native land holding rights as established by native customary law. Our traditions are very much recognition only in the context of extinguishment; formal recognition at the point of treaty, the treaty both recognizing and terminating the rights. The system of recognition and conversion involves recognition with <sup>out</sup> immediate surrender without necessarily an immediate conversion, but the process of creating non-native interests in native land does require a formal conversion of the native title into what would be a transferable European style title and some institution is necessary to ascertain and record in a formal way the



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1 native owners to particular lands and then to convert  
2 that, the native customary ownership into a European  
3 style title. The institution which does this administra-  
4 tive work typically will also examine the proposed  
5 transaction which will created the non-native property  
6 interest to determine whether the deal is fair and  
7 reasonable.

8 Since the process of determining  
9 native owners of particular lands involves an understand-  
10 ing of customary law, the institution created to handle  
11 the process must include native people or at least have  
12 native assessors attached to the institution in some  
13 manner.

14 In the paper, I then go on to  
15 give some background in relation to the system in New  
16 Zealand. Choosing New Zealand largely because it has  
17 been cited quite a number of times in Canada as a model  
18 that perhaps Canada should follow as a jurisdiction  
19 within the English colonial tradition in which things  
20 seem to have gone rather better than here.

21 In New Zealand, there is a  
22 Maori Land Court which was established in 1865 which is  
23 the basic institution for recognition and conversion  
24 of native title there. There have been critiques of  
25 the work of the Native Land Court and certainly the  
26 history in New Zealand is not ideal because it is land  
27 disputes which leads to a decade of warfare in New  
28 Zealand in the 1860's, and it's really in that period  
29 that the government is forced to some degree to try to  
30 formalize the institution of the Maori Land Court.



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1 In fact, the institution is created during that decade  
2 and it's during that decade also that the four Maori  
3 seats in Parliament are created. So, those are responses  
4 not to an initially successful native policy in New  
5 Zealand, but to a native policy which in disastrous  
6 disarray during the period in which those institutions  
7 are created.

8 It has been common assumption  
9 that New Zealand has had a particularly ideal and  
10 placid settlement, but it's now known in the last two  
11 or three years that there have been a number of Maori  
12 demonstrations in New Zealand around land issues and  
13 around other political rights issues in the country.  
14 So it's not as ideal as we had been led to believe.

15 I'd like to try to -- I also  
16 make references to the system of recognition and  
17 conversion fractions in New Guinea and in Fiji. Per-  
18 haps it would be easiest in trying to explain how such  
19 a system would work to, on a theoretical basis attempt  
20 to explain how it could work in the Northwest Territories.

21 You would necessarily begin  
22 by an examination of customary land ownership. The  
23 only source that I would be familiar with at this point  
24 on that is again the evidence of Dr. June Helm and  
25 Professor Beryl Gillespie in the Paulette case in which,  
26 particularly Dr. June Helm testified that the land  
27 holding unit among the Dene people traditionally was  
28 what she termed "a regional band". Her evidence indica-  
29 ted that the territories of the regional bands in the  
30 Northwest Territories could be mapped accurately and quite



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1 adequately. I would assume that the land use study  
2 which has been underway by the Brotherhood would give  
3 quite useful information as far as instituting any kind  
4 of system of this kind.

5 Let us assume and I'm just  
6 taking it as a random figure that there are 20 regional  
7 bands among the Indian people of the Mackenzie District.  
8 The initial question would be mapping those territories.  
9 If there was to be a right-of-way for a pipeline down  
10 the valley, it would then be a question of saying, "Who  
11 are the landowners?" Perhaps it would be ten of the  
12 20 regional bands which are the landowners under custom-  
13 ary law, of parts of the pipeline right-of-way which  
14 is desired.

15 I'll assume a process of  
16 negotiation. The negotiations could occur between  
17 these ten land-holding units and the corporations which  
18 wish to acquire the right-of-way. If there was  
19 agreement, then it would be necessary at that point  
20 for that portion of the land holdings of these regional  
21 bands to be recognized in a formal sense, in our style  
22 "formal sense", by a recording of the owners and a  
23 recording of the specific land. An agreement would  
24 then have to -- if there's an institution which also  
25 approves the agreement then the agreement would have  
26 to be approved in that way.

27 A European style title would  
28 be created simply for the right-of-way. That could  
29 then be transferred to the new landowners by sale or  
30 lease or in whatever particular manner. The balance of



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1 land holding of the regional bands would continue, and  
2 if ten years from now another pipeline is to come in  
3 or new mineral deposits were discovered or some other  
4 kinds of major, non-traditional land use were going to  
5 occur, at that point again, this same process is dealt  
6 with.

7 It seems to me that in looking  
8 back on the prairie treaties and the sort of development  
9 of the economy in southern Canada, that surely it's  
10 fairly obvious that the most disasterous thing for the  
11 native groups to have done was to have terminated  
12 completely their ownership at the beginning of that  
13 whole process. That, more effectively than any other  
14 single thing, dealt native people out of the new  
15 economic order which developed in southern Canada.

16 If some kind of system of  
17 recognition and conversion had occurred, native land  
18 holding rights would have continued through the period  
19 of European settlement and the appreciation of land  
20 values which occurred because of that settlement, the  
21 creation of the cash economy which occurred as a result  
22 of that settlement would have meant that native groups  
23 had a continuing real economic role in what we often  
24 refer to as the opening of the west. An economic role  
25 comparable perhaps to that that they had during the fur  
26 trade. But instead, there was a complete change of  
27 economic relationship from the fur trade period to the  
28 period of settlement and the treaties; one which effective-  
29 ly dealt native people out of the economy; that did not  
30 happen in the same sweeping way in jurisdictions like



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1 New Zealand and certainly did not happen in jurisdictions  
2 like Fiji, where, although the native Fijians are now  
3 not a majority of the population in Fiji, their land  
4 holding is very extensive and any major projects such  
5 as a major hotel resort project going in in that  
6 jurisdiction at that point, will go in on lease. That  
7 specific non-native land use will be the subject of  
8 negotiations at this point when that project goes in.  
9 If, ten years from now a similar project comes in,  
10 again that will be negotiated at that point.

11 The native groups there have  
12 not been dealt out of the evolution of the economic  
13 order in that jurisdiction.

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In Chief

I will turn now to page 31 of the paper. I did make reference to the business of allotments and I just want to note two other points in relation to property --

THE COMMISSIONER: Excuse me. Excuse me Mr. Sanders. Just before you go on, let's just pause a moment because you tried to tell us how, in a practical way the recognition of Indian title could be reconciled with development assuming that were thought appropriate. You said that if they're -- the part that I didn't quite follow you, was where you converted the acknowledged title of the Dene regional bands into a European, Euro-Canadian Anglo-Saxon right-of-way.

How did that occur? By negotiation merely, or simply?

A There'd be two aspects to it. The conversion -- the formalization of the title in Euro-Canadian -- into a Euro-Canadian style title would be formally<sup>handled</sup> by a particular kind of institution. I've used that as a very neutral term. It would be, in New Zealand, the Maori Land Court which is structured very much like a court. In New Guinea, it's called the Land Titles Commission and in Fiji, it's the Native Lands Trust Board. So that New Guinea and, the Fiji one is very clearly an administrative board. The New Guinea one is a bit between, it's rather more formal than most administrative boards and holds very formal -- some very formal hearings.

So, the question of creating the transferable title would be a matter for that



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1 institution.

2  
3 Q Well, when that institution  
4 looks at it in Fiji, New Guinea and New Zealand, does  
5 it examine the question whether it is in the large --  
6 the largest sense in the best interests of the natives  
7 to surrender their interest, whatever it may be, or does  
8 it simply look at the legalities of the situation?

9 A Typically, it does both  
10 in the examples that I am familiar with. There's  
11 certainly in New Zealand a veto power on the part  
12 of the Maori Land Court to any deal, and there is not  
13 clearly defined in the legal system there the exact --  
14 an exact set of criteria which, if you meet them, then  
15 automatically the transaction can occur. There's this  
16 kind of discretionary power in the court.

17 So, initially on the question  
18 really of the recognition, the formalization of the  
19 native ownership so that you can create a European  
20 style title. In that, the court is to reflect simply  
21 customary law and you will have native assessors or  
22 perhaps the institution itself for those purposes can be  
23 a native institution.

24 So, you get out of that part of  
25 the process the transferable title. Then you have the  
26 agreement to transfer or lease the title to non-native  
27 use. That agreement, in New Zealand would be subject  
28 to the approval of the Maori Land Court before it could  
29 come -- before it could be legally effective. There is  
30 therefore, still this sort of formal constraint which  
31 goes back in New Zealand to the Treaty of Waitangi



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1 and which crown monopoly on pre-emption was established  
2 much like the crown monopoly on acquisition of Indian  
3 lands which is formalized in our traditions in the  
4 Royal Proclamation.

5 Q Yes, and what you say  
6 ties in with what Mr. Manuel said yesterday. I simply  
7 want to make sure I appreciate the connection. The  
8 pattern in New Zealand was not for the native people to  
9 surrender their interest but rather to retain it and to  
10 surrender it as seemed appropriate that with the  
11 passage of years to enable development to occur. Is that  
12 essentially what you're saying?

13 A Yes, that's the theory.  
14 I say that explicitly because in fact in New Zealand  
15 historically, there was very considerable pressure on  
16 the Maoris to sell land and this really strained very  
17 much this institutional relationship which was attempted  
18 to be established. It made it very difficult in some  
19 ways for it to function well. But certainly what you've  
20 stated is the theory and it did result very clearly  
21 in a much more significant Maori retention of land in  
22 the economy. There were some problems because as has  
23 been acknowledged in the recent study, by way of it in  
24 fact the administrative system that was set up from the  
25 Maori land was one -- was a very poor one in comparison  
26 to the one that New Zealand law provided for European  
27 title which resulted in some title problems for Maori  
28 land.

29 But that's something that does  
30 not inherently have to occur and we have some of those



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1 problems in relation to Indian reserve lands in this  
2 country.

3 But those are problems which  
4 are administrative problems as far as I can see and  
5 don't necessarily follow from a system of this kind.  
6 One of the things that struck me about these systems and  
7 I really didn't know anything about them until I  
8 spent some time in New Zealand and the South Pacific  
9 is how well established they are as parts of the legal  
10 system in those areas. These are not strange and exotic  
11 things. These are a continuing part of the legal  
12 system. It's a part of lawyers' practise. You get  
13 some specialists and I refer in my paper, there's  
14 one of the Judges of the Maori Land Court in New Zealand  
15 in 1960 published what's very much a practioner's  
16 guide to dealing with the Maori Land Court and describing  
17 the process that's involved. These are stable and  
18 continuing parts of <sup>the</sup> legal system in those areas.

19 Q Just then Mr. Manuel  
20 pointed out yesterday that the Dene take the position  
21 that a land settlement should acknowledge their title--  
22 their Indian title to the Mackenzie Valley. The  
23 Government of Canada takes the view that a settlement  
24 should essentially be a settlement in which they would  
25 surrender their Indian title to the Mackenzie Valley.  
26 You're saying that in the Anglo-Saxon -- in our legal  
27 tradition -- the tradition of the dominant society,  
28 that way of approaching the problem is -- falls within  
29 our own legal tradition, and you say that in New Zealand  
30 they have proceeded in this fashion and retain the



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1 one of the essential characteristics of the tradition  
2 we have always pursued in Canada. That is, that the  
3 Crown always has a veto over the transfer of Indian  
4 lands to non-Indians.

5 A Yes.

6 Q That of course is built  
7 into our Constitution for the purpose of safe-guarding  
8 the interests of the Indians. Forgive me, I just want  
9 to do that as I go along so that when I'm rereading  
10 this, I can look for my own summary and use that as a  
11 beginning to-- Well, I've got it right, have I?

12 A Yes.

13 Q All right.

14 A On page 31 and 32, I have  
15 two brief sections. The first at the bottom of 31  
16 dealing with allotments.

17 A resolution of aboriginal  
18 title claims has, in certain areas involved allotments  
19 of land to individual native people or to native families.  
20 The two major examples appear to be allotments of  
21 reservation land in the United States under the Dawes  
22 Allotment Act in 1887 and the Half-Breed Land Grants  
23 in Canada under the Manitoba Act and the Dominion Lands  
24 Act.

25 Then a final paragraph on other  
26 land-holding systems. Resolution of aboriginal title  
27 claims may involved the establishment of reserves or  
28 the establishment of other systems for group land holding.  
29 As is now well know, the Alaska Native Claims Settlement  
30 Act granted land and money to a series of regional and



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1 local corporations; corporations established under  
2 normal state law.

3 In New Zealand and the United  
4 States, fractionalized interest in particular native  
5 lands, have been assembled into workable units by  
6 converting the fractional owners into shareholders in  
7 a land holding corporation. That's simply another  
8 variant thing that has occurred.

9 There are other examples of  
10 corporations or trusts being established for native  
11 groups. Legislation in Australia over the last few  
12 years has vested title to reserve lands in trust vehicles  
13 to give community control to the reserve system. A  
14 recent settlement of the Metis claim in Alberta also  
15 involved a trust drawn up on a contractual or private  
16 basis with no enabling legislation.

17 My conclusion of this section.  
18 Resolution of aboriginal title claims in English law  
19 can result in:

- 20 a. A system of recognition and conversion of native  
21 title.  
22 b. A system of surrenders and reserves  
23 of land  
24 c. Allotment to individuals or families  
25 d. Group land holding by a corporation trust or  
26 other body  
27 e. Certain rights to use lands such as hunting,  
28 fishing, trapping and gathering rights

29 I conclude that there is no  
30 reason in principle to exclude the possible application  
of any of these variant systems to the situation in the



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1 Northwest Territories.

2                   The fourth section of my  
3 paper, the final section, begins on page 34. Since  
4 in the second section I have concluded that the roots  
5 of       aboriginal title as a doctrine in our law are  
6 really in a common law rooted in practise, it seemed  
7 necessary in developing this argument to spend some  
8 time just repeating some material in effect which relates  
9 to the practise and the evolution of colonial institutions  
10 in the country.



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1 I don't intend to read this  
4 in detail. The first three pages get into a question  
3 which has interested me for a while, as to why in 1867  
4 a decision was made in favor of federal jurisdiction  
5 over Indians and lands reserved for the Indians. Oddly  
6 in the Confederation debates it appears that there is  
7 no reference why that decision is made. It appears  
8 to have been seen as non-controversial in the period  
9 in which it was made. It appears to me that there are  
10 two different strains of attitude towards Indians in  
11 a sense in a political way, the one is to see them as  
12 problems which have to be dealt with or changed or  
13 gotten out of the way; and the other is to see them as  
14 victims of the process <sup>who are</sup> in need of some special protec-  
15 tion. As far as I can ascertain, the decision in  
16 1867 was made on the analysis that the Indians were  
17 being victimized and that there was a need for protection,  
18 rather than on the notion that federal jurisdiction was  
19 necessary to remove them as obstacles to the process.

20 I've quoted on page 35 from  
21 the Report of the Select Committee on Aborigines  
22 of the British House of Commons in 1837. You do get  
23 in this period the creation of the Aborigines Protection  
24 Society, you have the termination of slavery throughout  
25 the Empire, you have the kind of humanitarian trust  
26 in English thought in the middle and late part of the  
27 19th century, and in 1837 this Select Committee was  
28 an extremely important one in terms of looking really  
29 seriously at aboriginal policy in the Empire, and it  
30 made a strong recommendation for centralized control.



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acknowledging that the results of English colonial activity had been disastrous for native tribes wherever it had occurred throughout the world, and to try and avoid that centralization was important because the local institutions would represent primarily settler interests, whose interests were basically in conflict with the interests of the indigenous population.

Now I'll read the quote in the middle of page 36 from Merivale's "Lectures on Colonialism and the Colonies," which also were very highly regarded in an earlier period.

"That the protection of natives should in all cases be withdrawn altogether from colonial legislature and entrusted to the central executive is a principle in which I think even the most jealous friends of colonial freedom must acquiesce. One of the most useful functions of a distant central authority counterbalancing to a certain extent its disadvantages, is to arbitrate dispassionately between classes having so many mutual subjects of irritation. "

Those sources which come before the 1867 British North America Act, I think, perhaps explain why the decision was made.

After -- I'm turning now to page 37 -- after 1867 the first major constitutional activity in Canada was the acquisition of Rupert's Land and the Northwestern Territory. I spend a couple of pages looking back at the history of acquisition of







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1 as necessary were very few; but there were, of course,  
2 Hudson's Bay Company -- there was of course the Selkirk  
3 Treaty in Southern Manitoba for the Red River settlements  
4 and there were, of course, on <sup>Southern</sup> Vancouver Island, Hudson's  
5 Bay Company Treaties, as you know.

6 The grant of Vancouver Island  
7 to the Hudson's Bay Company and the grant of Rupert's Land  
8 to the Hudson's Bay Company apparently were not regar-  
9 ded by the company as sufficient to avoid the necessity  
10 of dealing with the Indian tribes as landowners in the  
11 area.

12 I refer on page 39 to -- again  
13 to the reference of Indian territory which in two  
14 Imperial Statutes in 1802 and 1821, that term was used  
15 to describe both Rupert's Land and Northwestern Territory  
16 which of course we are presently in.

17 I follow then with some  
18 information about the evolution of the Hudson's Bay  
19 Company and its exclusive licence to trade, and the  
20 law which would appear to have been in force in both  
21 Rupert's Land and the Northwestern Territory at the point  
22 of the transfer of those areas from England to Canada.

23 I turn now to page 41. All  
24 acquisitions of territories by Canada after 1867 involved  
25 some questions of native rights, with the anomalous  
26 exception of Prince Edward Island and the special case  
27 of Newfoundland and Labrador. The first major acqui-  
28 sition was Rupert's Land and the Northwestern Territory.  
29 Section 146 of the British North America Act of 1867  
30 provided for the entry of those areas into Confederation



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by Imperial Order-in-Council on address from the Houses of Parliament of Canada, and that order-in-council would have the same effect as if it was part of the British North America Act.

I quote from the two addresses that occurred by the Canadian Houses of Parliament and from the deed -- and on page 42 from the deed by which the company surrendered Rupert's Land and that language is then incorporated in the Imperial Order-in-Council itself, and as Professor Peter Russell mentioned, this in fact creates a unique situation in the country in that these documents are constitutional documents and a constitution-<sup>land</sup>al guarantee of a recognition of native'rights in fact occurs here. I note in the middle of page 42 that two centuries earlier before 1870 when the charter had been granted to the Hudson's Bay Company, no concern had been expressed with Indian rights. In the manner of the day, grants and charters had no mention of aborigines.

In 1832 in Worcester v Georgia Chief Justice Marshall had said:

"These grants asserted a title against Europeans only and were considered as blank paper so far as the rights of the natives were concerned."

The concern with Indian rights in 1869 and 1870 in the transfer of Rupert's land and the Northwestern Territory demonstrated the degree to which that reinterpretation of the earlier grants had taken hold. I refer to sections in the Dominion Lands



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In Chief

Act after 1870 which make reference to the necessity of extinguishing Indian title before land grants are made under that legislation.

On page 43 I go into the question of the allotments, the half-breed allotments policy which began in Manitoba, and the list of rights of Riel's Provisional Government which were made to the Federal Government and which to some extent were accepted by the Federal Government and incorporated in the Manitoba Act of 1870.

The political background is significant and I don't think irrelevant at this point but I'll just skip over the brief reference to it there. On page 44 I quote Section 31 of the Manitoba Act of 1870. This is the - there are two basic responses, I suggest, to the Red River Rebellion and the list of rights of Riel's Provisional Government.

First was the political demand that Red River enter Canada as a province, and not as a territory, and that was basically agreed to by the Federal Government.

The Provisional Government wanted jurisdiction over land to be vested in the Provincial Government. That the Federal Government did not agree to, in a sense I suppose the compromise to Section 31 in which 1,400,000 acres were to be set aside and granted to the benefit of the families of the half-breed residents, and so provision was made, recognizing -- and this is explicit in Section 31 -- it is expedient towards the extinguishment of the Indian



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title to the lands in the province that these grants be made to the half-breeds.

So the system of allotments began. It is a tragic story. There were administrative delays and clear administrative bungling. There was a rapid influx of white settlement into the area. Power shifted extremely rapidly and many of the Metis people left in almost exile and moved further west and further north in Western Canada.

But still the Manitoba Act stands in our history as a unique example of the creation of the Constitutional order in a frontier jurisdiction on the basis of real political negotiation and consent by a native group. It was tragic that it took a rebellion for that to occur. But it was a greater tragedy perhaps foretold by the fact that Ottawa only recognized Metis rights in a crisis atmosphere. The Metis gains in the Manitoba Act were swiftly undercut by administrative delays and confusion, and by the rapid influx of European settlers.

The Metis, who had been able to dictate much of the Manitoba Act, lost any control they had had; many went into exile further west only to face the same federal indifference and blindness which had lain behind the Red River Rebellion. The Northwest Rebellion of 1885 was the tragic last stand for the Metis. It produced an extension of the half-breed grants to the<sup>north</sup> west, but little else. By then the half-breed grants had proven to be a serious mistake, for power had shifted too rapidly to the new



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settlers whose interests not unpredictably  
the Federal Government served.

By 1885 the half-breed grants  
program was debased and corrupted, the extension of the  
program was resisted by people within the Federal  
Government but non-Indian interests and precedent  
prevailed to extent the program in an irrational manner  
north into the present Northwest Territories.

The next paragraph at the bottom  
of page 45 extending onto 46 is just a brief reference  
to the treaties, but Father Fumoleau has done such a  
superb job on that that I'll simply pass over that.

On 46 I also cite the example  
of British Columbia, which of course enters Confederation  
in 1871 after a brief separate colonial history. My  
interest in mentioning British Columbia is simply to  
indicate again<sup>that</sup> on the entry of new jurisdiction into  
Confederation the question of Indian rights is crucial  
at that point. The history in British Columbia also  
serves as a warning against assumptions of goodwill.  
Clause 13 of the terms of union of British Columbia  
and Canada in 1871 was not explicit enough to ensure an  
orderly and healthy dealing with native questions in  
British Columbia after 1871, even on the basic question  
of federal-provincial disputes about reserves it was  
not until 1938 that the Federal and Provincial Govern-  
ments were able to agree finally on that question in  
British Columbia, and Indian people in British Columbia  
have successfully recently challenged certain of the  
elements of that agreement of 1938.



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On page 47 I refer to the transfer of portions of Rupert's Land to the Provinces of Ontario and Quebec, in 1912.

The Federal Government, I suggest, now had experience in relation to jurisdictional problems, <sup>both</sup> in Ontario and British Columbia. In 1912 they made special provision in both the Quebec Boundaries Extension Act and the Ontario Boundaries Extension Act to ensure that Indian rights would be recognized in the area. The problems are again evident by the fact that the sections in the Quebec Boundaries Extension Act of 1912 were never complied with and formed one of the major bases of the litigation relating to the James Bay hydro-electric project.

On page 48, no constitutional provisions with the Indians occurred in the Saskatchewan Act or the Alberta Act in 1905 for the reason that the Federal Government retained ownership of land and natural resources until 1930. It was in 1930 and the Natural Resources Transfer Agreements which were given effect by the British North America Act of 1930 that provisions were made in relation to reserve lands, lands for future reserves, and protection of hunting and fishing rights.

Again we have experience since 1930 showing some of the problems of an incomplete definition. The negotiations in relation to a reserve at Fort Chipewyan I think have been going on for at least ten years, and only recently I think part of the reserve allotment was finally agreed upon. There have



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been a series of questions recently about hunting rights because of provincial actions in the Prairie Provinces designating areas as preserves or parks, and thereby attempting to limit Indian hunting rights in the area.

At the bottom of page 48, I come finally to the Northwest Territories itself as presently defined. The Carrothers Commission in 1966 described government in the Northwest Territories as:

"A colonial form of government."

This is a technical description which I suggest is basically still true. In a review of government in the Northwest Territories in that report, which takes 19 pages, only one paragraph is assigned to the Department of Indian Affairs, and I'll read that paragraph:

"On January 1, 1966, the Indian Affairs Branch was transferred from the Department of Citizenship & Immigration to the Department of Northern Affairs, thereby placing administration of Indian affairs in the north in the same department as Eskimo administration."

More space was spent on the Post Office than on the Department of Indian Affairs.

In a review of types of local government in the Territories, no mention is made of Indian Band Councils. The report is striking in its omission of any discussion of the Indian Act or the Department of Indian Affairs. This occurred, of course, for the very real reason that neither the Act nor the Department played any significant role in the life of people in the Territories. Indeed in



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1 1967 a year after the Commission's report, the Depart-  
2 ment of Indian Affairs commenced to withdraw personnel  
3 from the Northwest Territories, but not the Yukon. This  
4 created a unique situation in terms of formal, federal  
5 native policy, since the powers of the Territorial  
6 Council are confined to provincial powers the situation  
7 was created which minimized, it seems to me, as much as  
8 possible any special legal regime for Indian people.

9 The membership sections of the  
10 Indian Act applied to the Territories, but this I  
11 find paradoxical for the membership system historically  
12 developed in Southern Canada <sup>as a</sup> concomitant to the reserve  
13 system. It was designed to protect the reserve land  
14 base by defining and limiting the people who could be part  
15 of an Indian Reserve community. In the Northwest  
16 Territories where there have been no reserves until  
17 the Hay River Reserve, the membership system meant  
18 treaty payments of \$5. a year, but little else.  
19 The more modern consequence of Indian status which I  
20 suggest is a claim to services from the Department of  
21 Indian Affairs, did not exist after the withdrawal of  
22 the Department in the years immediately after the  
23 Carrothers Report.

24 In the paper on the philosophy  
25 of the Department of local government prepared in  
26 January, 1975, there was an acknowledgment of the  
27 conflicting or overlapping roles of Indian Band  
28 Councils and Settlement Councils in the Northwest  
29 Territories. There was also a statement that native  
30 land claims,



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"clearly have an important bearing on the future forms and structures of both local and Territorial Government."

I should note that the Department of Indian Affairs <sup>has</sup> re-established a presence in the Northwest Territories and I think that is in fact the term which they use for the office that they have here, it is not a program office, it is more a liaison role, it is a presence. That, the re-establishment of that was a direct result, in my understanding, of submissions by the Indian Brotherhood.

Returning to page 50 of my text, recently Mr. Justice Morrow spoke at the <sup>Natural</sup> Resources Institute in Winnipeg on native land claims and the proposed pipeline. Part of his speech, as reprinted in "News of the North" read -- and I quote:

"I invite you to study the history of our west for the periods leading up to 1870 and 1885, the periods of the Riel Rebellions. We are almost in the same position in our north today. I do not mean to imply that the rank and file of our Indian and Eskimo people are revolutionaries. Not at all. But I am implying that the same feeling of frustration and desperation are there."

I hesitate to select just this one statement from Mr. Morrow's speech, because it may seem sensationalistic, but I was struck by this statement for I think there are certain direct parallels between the situation on the prairies after 1869 and the present situation in the Northwest Territories. In



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both situations the native people faced the loss of numerical superiority, and the political power that superiority meant or could mean. In both situations basic provisions for native land rights, including the lands upon which native people had homes, had not yet been made, though major non-native entries into the area were imminent. In both situations Ottawa and the federal politicians were seen as distant figures with little knowledge or understanding of the territory now being "opened up". That lack of knowledge and understanding was coupled with sweeping power, the exercise of which could not be called to account by political forces in the new territory. In other words, both areas suffered from a colonial style relationship to the central government. In both situations major non-native land use projects were in their initial stages and a major revolution of the constitutional status of the area was occurring. In my mind, the closest parallel to the present situation in the Northwest Territories is the one drawn by Mr. Justice Morrow, the situation on the prairies in the years between 1870 and 1900.

I suggest that Canadian constitutional history on the review I've just done would indicate that decisions relating to a resolution of <sup>native</sup> land claims and decisions relating to the constitutional evolution of the Northwest Territories cannot be separated. I suggest that the recent land claims of the Inuit confirms this analysis.

My conclusion for this



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1 portion; there is in Canada a history of recognition  
2 of Indian aboriginal title beginning with the Royal  
3 Proclamation of 1763 and carrying through with historical  
4 and geographical continuity to the present Northwest  
5 Territories. Such continuity does not exist for  
6 certain other areas such as British Columbia, Southern  
7 Quebec, and the Maritime Provinces, including Newfound-  
8 land and Labrador. To disregard Indian aboriginal  
9 title in the Northwest Territory would be to disregard  
10 the strongest line of historical recognition in the  
11 country. There is in Canada in the years after 1867  
12 a history of concern with native policies at the time  
13 of the evolution of colonies or territories to  
14 provincial status. To a large degree this results from  
15 the fact that native policy is normally federal and  
16 control over land and natural resources is normally  
17 provincial. That division of power makes constitutional  
18 provisions for Indians in provincial constitutional  
19 documents necessary.

20 I come now to my final  
21 section, which is the shortest of them all. The  
22 relationship of non-native land use and the resolution  
23 of aboriginal title claims. Earlier it was suggested  
24 that there were five differing kinds of property regimes  
25 or property rights which could emerge from a resolution  
26 of aboriginal title claims. I list them again:  
27 (a) a system of recognition and conversion;  
28 (b) reserves  
29 (c) allotments  
30 (d) corporations or trusts holding land



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(e) usufructuary rights to hunt, fish, trap, gather  
and harvest the land.



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In Chief

1                   This is a list which is drawn  
2 from experience -- from the experience in colonial  
3 areas. These are all in place in particular areas and  
4 I'm not dealing at this point with any sovereignty  
5 questions or any formal grant of legislative power to  
6 native groups.

7                   It seems clear that permitting  
8 non-native land use without a resolution of aboriginal  
9 title claims necessarily compromises the nature of the  
10 claims or assumes a particular type of resolution of  
11 the claims. To see the question simply in terms of  
12 expropriating either government crown lands or expro-  
13 priating Indian lands fails, I suggest, to appreciate  
14 the alternative possibilities of native ownership that  
15 could follow a resolution of aboriginal title claims.

16                  To pick two alternatives, the  
17 expropriation might be of individual private land  
18 holdings under an allotment system or the expropriation  
19 of property rights held by a corporation for all Indian  
20 people in the Mackenzie District. It also fails, I  
21 suggest, to appreciate that in legal regimes of native  
22 land, there have normally been special restrictions on  
23 expropriation with the result that the process of  
24 expropriation itself is not the same for Indian lands  
25 and non-Indian lands. That of course is true for  
26 Indian reserve lands in southern Canada.

27                  The variants involved are  
28 not simply those of ownership and compensation but also  
29 of control.

30                  Thank you Mr. Commissioner for



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1 your patience.

2 THE COMMISSIONER: Thank you  
3 Mr. Sanders.

4 I think that we'll stop for  
5 coffee for a few minutes.

6 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

7 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

8 MR. BELL: Mr. Commissioner,  
9 we filed as exhibits the complete text of Mr. Sanders  
10 statement plus a summary and biographical appendix  
11 thereto.

12 Mr. Sanders is now available  
13 for cross-examination.

14 MR. SCOTT: Mr. Bayly?  
15 CROSS-EXAMINATION BY MR. BAYLY:

16 Q Mr. Sanders, you spoke  
17 about the settlement of the Manitoba Metis claims as  
18 being one that had the potential for success. It  
19 appeared from your evidence that one of the things that  
20 may have gone wrong with that settlement was that in  
21 terms of being able to implement it, it was followed  
22 so closely by an influx of people from eastern Canada  
23 that virtually the territory was swamped before the  
24 settlement could be implemented. Would you agree with  
25 that?

26 A Yes, I think there's  
27 two ways of looking at it. The settlement that was  
28 put in place was somewhat different than that proposed  
29 by the provisional government of Red River. You had  
30 Metis political institutions in place and in effect



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Cross-Exam by Bayly

1 I think what the provisional government wanted was the  
2 control to be given to those existing institutions.  
3 If that<sup>had</sup> happened, then I would assume that the history  
4 of implementation would have been extremely different  
5 because it would have been a local group concerned with  
6 the existing half-breed population.

7 When that was not done and the  
8 power over land was retained by the Federal Government,  
9 this, I think created a very substantial implementation  
10 problem and you have clear delays which presumably  
11 were unanticipated when the act was passed and it's my  
12 impression that you never in fact are able to get an  
13 implementation. Grants are made but<sup>the</sup> thing becomes  
14 really quite chaotic very quickly and certainly, you  
15 know in terms of implementation I think it would be  
16 wrong to say that there was an implementation and there  
17 would have had to have been either considerably more  
18 rapid federal movement in terms of the allotments, or  
19 just a structured period of time to allow the implemen-  
20 tation to<sup>be</sup> completed before the influx of settlers.

21 Q In the Northwest Territories  
22 would you agree with me that there are no analagous  
23 institutions to the local government institutions that  
24 the Metis had in Manitoba?

25 A I think it's very  
26 different.

27 Q In Manitoba, the Metis  
28 were familiar with the institutions that they had, you've  
29 stated?

A Yes, they'd been created



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Cross-Exam by Bayly  
Cross-Exam by Sigler

1 essentially out of the organization of the buffalo  
2 hunts and that evolved very clearly, so it's not just  
3 a provisional government which was created at the time  
4 of the Red River rebellion. You have some backup to  
5 the institutions which in form were created at the  
6 time of the rebellion and so they appear to be, you  
7 know, quite functional.

8 Q Would you agree with me  
9 then that if you were going to implement a land claims  
10 settlement of whatever kind resulted in the Northwest  
11 Territories, you would either have to use institutions  
12 which are presently being used if they existed or  
13 you would have to give some time to the people to learn  
14 how to implement new institutions?

15 A Yes.

16 Q I gather at this point,  
17 it's impossible to say what that time period might be?

18 A I think it would be  
19 necessary to have a far more detailed understanding of  
20 the local native communities here than I have, to make  
21 any kind of estimate on that one.

22 MR. BAYLY: All right. Those  
23 are all the questions I have. Thank you.

24 CROSS-EXAMINATION BY MR. SIGLER:

25 Q Mr. Sanders, you referred  
26 to the Carrothers Commission report for a statement that  
27 what the Northwest Territories has is a colonial form  
28 of government. Would you agree that that form of  
29 government is a colonial one not only for native people  
30 but for non-native people in the Northwest Territories



D. E. Sanders  
Cross-Exam by Sigler

1 as well as for all residents of the Territories?

2 A Yes, I agree.

3 Q I tried to be careful to  
4 suggest that I wasn't using the term necessarily in  
5 a pejorative context at that point but simply as a  
6 technical description of the situation here. What would  
7 be the elements, in a technical or legal sense in your  
8 mind to a colonial system of government as opposed to  
9 a -- to other types of government?

10 A The political power basically  
11 ly does not rest here and with the population here.

12 Q Now when, using the  
13 example of Manitoba again, and the Manitoba Act. Under  
14 the Manitoba Act, I take it there was<sup>a</sup> new institution  
15 of government set up for the new province of Manitoba  
16 that ended colonial government for Manitoba?

17 A In part. It was certainly  
18 an ending of some of the elements of colonial government  
19 but the fact that the Federal Government retained  
20 ownership of land and natural resources still made  
21 Manitoba much more dependent on the central government  
22 than the provinces that were already in the Confederation  
23 such as Ontario and Quebec.

24 Q So then you're saying that  
25 really, the real end of colonial government at least in  
26 terms of bringing the people in the Territories to the  
27 same point that people in the original provinces were,  
28 only happened when there was the transfer of resources  
29 and land to the newly created provinces?

30 A That's correct.



D. E. Sanders  
Cross-Exam by Sigler

Q That would say be at  
1934 for Alberta, Saskatchewan.

A And Manitoba, yes.

Q Right. Now Mr. Manuel,  
when he gave his evidence yesterday called for the  
re-organization of political institutions to include the  
element of political sovereignty and political self-  
determination as something that was necessary, in his  
view to a just and equitable settlement of aboriginal  
land claims. I wonder from your experience in reviewing  
the common law if you could tell us whether the common  
law ever recognized the retention of aboriginal political  
institutions or political sovereignty, self-determination  
by the aboriginal peoples as incidents or elements of  
aboriginal title?

A The colonial legal  
tradition is essentially to begin with the denial of  
sovereignty. Some native groups in eastern Canada have  
-- were recognized as allies. That term was used.  
It's <sup>used</sup> in the articles of capitulation in 1760. It's  
used in the grants that were made to the six nations  
Indians when they came up to Canada from what is now  
the United States after the American revolutionary  
war. The argument has been made on the basis of that  
usage that a recognition as allies is something  
different than a recognition as subjects, and that it did  
constitute a kind of recognition of at least internal  
sovereignty by the Canadian nation.

That argument has been made  
on the basis of those materials, I think really only once



D. E. Sanders  
Cross-Exam by Sigler

in a case called Logan versus the Attorney-General of Ontario in the 1950's and was rejected by the Ontario High Court. There becomes some sort of a terminological problems in the sense that the term "sovereignty" or elements of sovereignty or quasi-sovereignty is used very widely in the United States law as a phraseology basically used by the courts in judicial decisions to describe the nature of Indian self-government on the reservations in the United States and that has quite long roots in the United States law so in terms of the U.S., one can use the term "sovereignty". It is used, as I understand it in the U.S. courts in much the same way as they used the term to describe the powers of states within the union.

So, there becomes some sort of problems in transporting that terminology since, in Canada, we haven't had a tradition of use of the terminology. But, it seems to me that there are some very strong parallels between reserve government in the United States and reserve government in Canada and certainly I think in terms of federal policy, if we're moving in any direction from federal statements it's certainly to increasing band powers in relation to reserves in southern Canada. So, we may be moving very close to what in the United States is referred to as sovereignty.

Q You say that there may be some basis in law for the Dene arguments for political sovereignty and self-determination?



D.E. Sanders  
Cross-Exam by Sigler

A It would be incorrect to say that the English colonial tradition uniformly and completely denied sovereignty. I think it would be incorrect to say that it ever recognized whole sovereignty on the part of the tribes. You get a sort of series of examples and treaties of cession, ceding sovereignty from native tribes to European colonial powers were recognized as effective cessions of sovereignty resulting in the acquisition of the territory by cession.

In spite of the fact that the European countries would still state that the tribes were not -- did not have international personalities as sovereign nations. So you get a sort of compromise situation. They're sovereign to the degree that they can cede sovereignty but they are not sovereign in the sense that we'll recognize them internationally as being equivalent to the European nation.

The, what are called treaties of peace and friendship in the Maritime Provinces, which were entered into between 1713 and about 1763, there were a series of maybe half a dozen of those. The situation during that period was one of intermittent warfare between English and Indians in the area and the treaties mark peace -- they are in fact peace treaties and are not concerned with transfer of land but are concerned with the Indians affirming or reaffirming allegiance to English sovereignty. So in that sense, those treaties do deal with the question of sovereignty. The Treaty of Waitangi in New Zealand in 1840 is clearly a treaty dealing with



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Cross-Exam by Sigler

1 sovereignty. It does have a provision about land but  
2 that's just to establish the Crown right of pre-emption.  
3 The treaty itself does not transfer any land.

4                                 Fiji was also acquired by a  
5 cession of sovereignty by native leaders to England.  
6 The examples in Canada are limited but the history  
7 is not one without a few.

8                                 Q       So it's because of this  
9 lack of, say recognition in the international community  
10 that you have made your first analogy to the American  
11 state in their treatment of the United States -- your  
12 discussion there -- to have a sovereign entity within  
13 a Canadian nation?

14                                A       The kind of paradox  
15 of this situation were explored to some extent by the  
16 Marshall Court Judgments in the United States in the  
17 early 19th century. The major case is that of Cherokee  
18 Nation versus Georgia. The Cherokees attempted to  
19 invoke original jurisdiction in the United States Supreme  
20 Court in disputes between states or between nations,  
21 claiming that they had the status of a nation and the  
22 State of Georgia had the status of a state; that they  
23 could therefore begin the litigation in the United States  
24 Supreme Court.

25                                The judgment, there was  
26 a split decision with a minority upholding original  
27 jurisdiction. The majority decision being given by  
28 Chief Justice Marshall which for the first time he  
29 gives -- I think it is the first time. It might have  
30 been in Johnson v McIntosh as well -- he uses the phrase



D.E. Sanders  
Cross-Exam by Sigler  
Cross-Exam by Hollingworth

1 "dependent domestic nation". In a sense the contradictions  
2 of the situation are encapsulated in this kind of phrase.  
3 Nationhood or sovereignty is recognized but not in a  
4 completely international sense. It is confined within  
5 the dependency created by the realities of colonial  
6 experience and Marshall is very clear in his judgments  
7 in acknowledging that that limitation is a recognition  
8 of "real politik ." as Professor Russell said yesterday.  
9 That was an overwhelming political reality which the  
10 Courts since they were created as a result of the  
11 colonial process and are not neutral historically in  
12 that situation. It was a political reality which  
13 the Courts could not override.

14 MR. SIGLER: Those are all  
15 my questions.

16 MR. SCOTT: Mr. Hollingworth?

17 CROSS-EXAMINATION BY MR. HOLLINGWORTH:

18 Q Mr. Sanders, I was  
19 interested in your discussion of systems of recognition  
20 and conversion of native title, and as I understand your  
21 presentation and your exchanges with the Commissioner,  
22 there's a creation of the, what you call the European  
23 style title in New Zealand for example. Is that correct?

24 A That's correct.

25 Q Would you equate that with  
26 the "fee simple" concept as we understand it in this  
27 country?

28 A Yes.

29 Q Well, does the "fee simple"  
30 go to the native owner subject to the right of eminent



D.E. Sanders  
Cross-Exam by Hollingworth

domain?

A That's been a matter of some controversy in New Zealand. Clearly in national terms, there is a right of eminent domain and I am not aware of a general exemption of Maori land in New Zealand from a legislative right of eminent domain.

There has in the country been, as I understand it, expropriation or eminent domain powers vested in local levels of government under I think it's called the Town and Country Planning Act and that has been a matter of some controversy in New Zealand because the local authorities under that legislation didn't have the power of expropriation.

The power of expropriation existed in the system but the system that was in place, in fact, treated Maori land somewhat differently than other land in terms of expropriation. Expropriation, of course, can take place in Canada in relation to Indian reserve land where reserves exist, but the legal rules are somewhat different and it requires an explicit consent of the Federal Cabinet to permit it to occur.

Q Is that because the lands are considered to belong to the Dominion of Canada still that are on reserve lands that that proceeds?

A No. Because reserve land -- the question of the exact ownership of reserve land in this country is in fact much more complicated than one would expect. You have titled at some points in private owners. You have titled at some points -- we are talking about theoretical title, theoretical titling in the



D.E. Sanders  
Cross-Exam by Hollingworth

1 Crown in the right of a province in some instances, some-  
2 times the theoretical title in the Crown in the right of  
3 the Federal Government.

4 The jurisdiction over  
5 lands reserved for the Indians which has been given to  
6 the Federal Government allows the Federal Government to  
7 control use and possession, occupancy of Indian reserve  
8 lands. It appears to be the base under which the Federal  
9 Government can make special provisions in relation  
10 to expropriation. So it's in fact a question of  
11 legislative power rather than simply a question of  
12 federal ownership. It is federal legislative power which  
13 makes it -- makes the provinces constitutionally unable  
14 to expropriate. There is then a provision in the Indian  
15 Act which deals with the question of expropriation. It  
16 says that expropriations under the provincial statute  
17 can only occur with the consent of the Governor-general  
18 in Council.

19 Q Well, wouldn't you  
20 foresee this business of eminent domain as being a bit  
21 of a problem if you wanted to maintain it because it  
22 seems to me that eminent domain closed from the fact that  
23 the lands are granted to the owner from the Crown subject  
24 to the right of eminent domain. Wouldn't that be a fair  
25 statement in say your land in Victoria and my land in  
26 Calgary?

27 A I'm not concerned  
28 conceptually with whether it is a limitation on the grant,  
29 as you have suggested or whether it is simply an exercise  
30 of parliamentary sovereignty. It doesn't to me matter.



D.E. Sanders  
Cross-Exam by Hollingworth

Q You feel it could be an exercise of parliamentary sovereignty, that you could have --

A Yes, I think that's --

Q Allowed.

A One could argue it both ways. I suspect in English property law.

Q Well, do the -- excuse me -- do the Maori lands in New Zealand carry with them the ownership in the subsurface rights?

A I'm sorry, I don't know in relation to New Zealand. My impression is that there has been very little subsurface development in fact in New Zealand. I'm not aware of any litigation. There might be legislative provision on that but I'm sorry I don't know.

Q Have you had any thoughts on the matter if this system was applied in the Northwest Territories?

A Well, the only decisions which I can refer you to on the question of subsurface rights are judicial decisions in the United States which deal with the question of whether aboriginal title includes subsurface rights as well as surface rights. The ruling there has been that they are included. There is another -- only one other Court decision on that point that I'm aware of which is a decision of the High Court of Australia which is equivalent to the Supreme Court of Canada and which is an appeal from what was then the Territory of Papua, New Guinea with a statute vesting



D.E. Sanders  
Cross-Exam by Hollingworth  
Cross-Exam by Steeves

subsurface rights in the administration as they call it. We would say Crown, and the question was whether this was an expropriation without compensation and the, which is partially forbidden in the Australian Constitution and they ruled that it might well be -- that it was within the legislative power of the institutions to do it and therefore they avoided the question as to whether the subsurface rights in fact attached to the native title. Those are the only legal authorities I am aware of on that point. Those were cited to Mr. Justice Morrow in the Paulette case as the only authorities we were aware of. I'm not aware of any ruling in Canada which deals with the point.

MR. HOLLINGWORTH: Okay, thank you. Those are my questions.

MR. SCOTT: Mr. Steeves?

CROSS-EXAMINATION BY MR. STEEVES:

Q Sir, if the New Zealand model of dealing with aboriginal rights were transferred to the Northwest Territories, would the government in Ottawa maintain the veto power over disposition of lands as to which there was a claim by native groups?

A If the New Zealand model was transferred to the Northwest Territories there would be a veto in an institution that it would be the equivalent of the Maori Land Court which is established in New Zealand with the same kind of independence as I understand it as the regular judicial system.

Q So there is no veto power in the equivalent of the Indian -- the Department



D.E. Sanders  
Cross-Exam by Steeves  
Cross-Exam by Scott

of Indian Affairs and Northern Development in this  
system.

A It does not vest in  
a government administrative department.

Q It vests in the Court?

A That's right.

CROSS-EXAMINATION BY MR. SCOTT:

Q Mr. Sanders, in your paper,  
you gave examples of recognition and conversion systems  
in other jurisdictions. Are there any examples of such  
recognitions of native customary law of hunting and  
gathering societies as opposed to agricultural societies?



D.E. Sanders  
Cross-Exam by Scott

A I'm not aware of any system of recognition and conversion which has been applied to a society with no agriculture. There might be some in Africa, but I don't know that, it's just my knowledge of the African systems is extremely limited. I really rely on my familiarity with the ones in the South Pacific. In New Zealand there was a deliberate, an express provision that the recognition extended not simply to the cultivated lands, also to hunting lands there, so it encompassed both kinds of lands but with groups that had both a hunting and an agricultural economy.

Q Well, what do you say about the problems, if any, associated in applying recognition and conversion to communities where hunting and gathering societies are the rule rather than an agricultural society? Are there any difficulties associated with that, that you foresee?

A I don't on a theoretical level see any difficulties. The end results may look a bit different for the basic reasons that the land areas which are owned would be much more extensive and the -- for some of the groups the group in ownership might also be more extensive because sometimes in the agricultural areas you will have ownership of a very specific piece of land by perhaps an extended family unit as though not even a sort of band level so the number of owners may be quite small. But in New Zealand you do have a situation in which for significant lots of land you have ownership in the hundreds and over



D.E. Sanders  
Cross-Exam by Scott

1 a thousand individuals as the collective owners of the  
2 area, so the numbers game may not in fact be any  
3 different than some of the things that happened in  
4 New Zealand, but the scale of the land would be rather  
5 different. There is one particular problem which  
6 would probably have to be considered very seriously,  
7 it's a problem that has existed in New Zealand. Maybe  
8 it wouldn't occur here as much. The system also pro-  
9 vided individual Maoris who wanted to sort of  
10 separate out their interest, who were moving more to  
11 the private ownership business in terms of their own  
12 management of their own resources, and there were  
13 clear problems in New Zealand in sort of administrative-  
14 ly handling that. That, I would think, would have to  
15 be considered here. But I don't see any theoretical  
16 problem applying those systems to a hunting territory.

17 Q Turning to another  
18 matter, could you just list for us with comment, if  
19 you think it necessary, the characteristics of aborig-  
20 inal title as recognized as you see it in Canadian  
21 law? What are the characteristics of that title?

22 A There is a pattern firstly  
23 of describing it as a right to use and possess as a  
24 possessory title, as a usufructuary title. I think that  
25 this is related conceptually to the notion of the Crown  
26 monopoly on acquisition and also to the ruling in the  
27 St. Catherine's Milling case that Indian title was in  
28 fact not transferable at all, so that the process  
29 legally which occurs at a valid Indian treaty is  
30 that the rights to use and occupy of the Indians is



D.E. Sanders  
Cross-Exam by Scott

ended, and at that point then the exclusive right of use and occupancy having been ended, you then look to the general principles of Canadian constitutional law to determine what level of government then holds those lands as unencumbered Crown lands. The limitation of transferability appears to be the reason to describe the title as a usufructuary title. It does not appear to be any other limitation which has been defined to the title other than the limitation of transferability. The usufruct concept involves the notion of having the right to use, possess and exploit the resources of the land.

Q Well, I'm not quite sure I'm following you. One characteristic, perhaps not the first, would be what you call its possessory nature.

A M-hm.

Q Or usufructuary, a word I'm not happy with. The second characteristic would be that the -- its inalienable nature, is that what you're saying?

A That's correct.

Q Would a third characteristic be the communal characteristic or the communal way in which it is held?

A I don't think that's a distinctive characteristic of Indian title or aboriginal title because of course in our legal system we have a number of methods of communal ownership of lands. You have to begin --



D.E. Sanders  
Cross-Exam by Scott

1 Q I recognize that in the Euro-  
2 Canadian system , as we're coming to call it, there are  
3 such techniques for group title; but would it be correct  
4 to say that communal title is universally characteristic  
5 of aboriginal title? In Canada at least, in Canadian  
6 law.

7 A I think there's a danger  
8 in that, in that while I can agree with it, I think it  
9 might be misleading in the sense that among some of  
10 the groups you have not band or tribal ownership but  
11 ownership in clans or extended family groups. So in  
12 terms of the numbers of people involved it's relatively  
13 limited, it's not a standard assumption that you have  
14 a band and a band has complete communal ownership to  
15 all parts of the tribal territory. On parts of the  
16 north coast of British Columbia you could have parti-  
17 cular fishing sites or gathering areas, seaweed areas  
18 which were owned by a particular family, and therefore  
19 you had that internal land-holding system vesting  
20 ownership in particular families or extended family  
21 groups. Now that's not a completely individual thing  
22 in which one person owns a particular resource. If  
23 it's only that that we're excluding, I think it's  
24 true that in customary land systems in Canada that  
25 ownership was always communal.

26 Q And could you go on to  
27 say that the nature of the communal ownership was that  
28 the owner, if you can use that word, was an identi-  
29 fiable ascertainable group tribe, nation, even family  
perhaps.



D.E. Sanders  
Cross-Exam by Scott

1 A Yes.

2 Q What about recognition of  
3 hunting and fishing rights, is that a characteristic  
4 or an incident of all aboriginal title in Canada?

5 A Yes, I think so. That's  
6 one of the virtues, if there are any, to the term  
7 "usufruct" which indicates it has Roman law origins and  
8 involves things like being able to pick apples off  
9 the tree on the land and things of that kind. So  
10 you're clearly able to use the fruits of the land. I  
11 should mention, as you probably know, that Mr. Justice  
12 Judson in the Calder case rather proposed the use of  
13 the term "usufructuary" as being particularly useful  
14 or enlightening in the whole circumstances; but I think  
15 we still use it because he didn't give us any other  
16 term to use, although he wasn't very happy with that  
17 one. There has been a bit of confusion in the Courts  
18 on the question of off-reserve hunting rights as to  
19 whether they legally are considered to attach to  
20 Indians as Indians, or whether it's possible that they  
21 should be considered as rights to use land and there-  
22 fore within federal jurisdiction in relation to lands  
23 reserved for the Indians. The major ruling appeared  
24 to be the White and Bob case which defines those rights  
25 as far as legislative power is concerned as flowing  
26 from federal jurisdiction over Indians. There's a  
27 recent decision of the Nova Scotia Court of Appeal in  
28 the Isaac case in the reserve context which seems  
29 to describe on-reserve hunting rights as a property<sup>x</sup>  
30 right and under federal jurisdiction for that reason.



D.E. Sanders  
Cross-Exam by Scott

1 Q Well, to put the question  
4 in a different way, sir, to be sure I have a reasonably  
3 complete list of characteristics of aboriginal title,  
4 what are the limitations, if any, on that title, apart  
5 from the ones you've covered, as compared to the Euro-  
6 Canadian fee simple?

7 A I think the only limita-  
8 tion is transferability.

9 Q Well, what do you say  
10 about the right of the Crown to permit a transfer or  
11 to take possession of that title? Is it in any sense  
12 distinct or first of all does that right exist, and  
13 in the second place is it in any sense different from  
14 the right that exists in the case of fee simple?  
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D. E. Sanders  
Cross-Exam by Scott

1                   A     I'll try to answer and  
2     if it doesn't deal with what you're asking, I think  
3     we may have to try again but the -- I think there's  
4     some confusion in the court judgements<sup>and</sup> in the legislation  
5     on the problem of transferability because in effect  
6     what happens in relation to reserve lands in the country  
7     is that, what one could describe as a transferable  
8     usufruct           comes into existence, which in absolutely  
9     orthodox terms is a contradiction in terms that the  
10    Courts, particularly in the Star - Crown case from Quebec  
11    define Indian rights to reserves as a usufructuary  
12    using the same terminology which the St. Catherine's  
13    case applied to Indian rights to unsurrendered tradition-  
14    al lands.

15                   There was then, by legislation  
16    created a transferability of those reserve lands which  
17    have been defined by the Courts as having a usufructuary  
18    Indian interest in them. So, what we've done is in  
19    effect alter the concept in relation to reserve lands  
20    so that in terms of creating a transferable usufruct,  
21    we have done it in that context, we could do it in others.

22                   Q     Well then, taking the  
23    question more broadly, what do you say about the  
24    possibility of taking aboriginal title as it exists  
25    in Canadian law and building into it some control in  
26    the community that leads even to alienation that's not  
27    dependent on the will of the sovereign? Are there any  
28    difficulties in that?

29                   A     I see that not as a  
30    theoretical problem but essentially a choice of method.



D. E. Sanders  
Cross-Exam by Scott

1 It would be possible to say, "Fine, the political  
2 situation of these particular communities is such that  
3 there is no reason now for protective institutions.  
4 We will simply vest ownership with transferable rights."  
5 I don't see any theoretical problem with doing that.

6 Q I take it from what you've  
7 said and correct me if I'm wrong that the -- under  
8 the general supervision of, for example, the New Zealand  
9 Land Court, that's precisely what's happened there,  
10 isn't it?

11 A That rights of transfer-  
12 ability have been given to Maori groups?

13 Q That the recognition  
14 and conversion system has been introduced which creates  
15 a title that meshes with the Euro-Canadian title  
16 system and that under the general supervision of that  
17 court or perhaps even without it, alienation is -- and  
18 therefore, full control by the communities is developed  
19 and permissible.

20 A The New Zealand situation  
21 can be explained in terms that private transactions  
22 in Maori land which have the result of converting it  
23 from Maori land to Euro-New Zealand tenure are possible  
24 and the Maori Land Court play a sort of supervisory  
25 role in relation to that, one which might, at some  
26 point be able to be dispensed with.

27 Q Yes, but under that system,  
28 the power of the communal owner goes beyond the ability  
29 to surrender the land to some crown use and goes further  
30 to the ability of the community to surrender the land



D. E. Sanders  
Cross-Exam by Scott

1 third parties. That is, to deal with it under the  
2 general supervision of the Court as you would deal with  
3 it in fee simple.

4 A In fact, the crown monopoly  
5 on preemption in New Zealand which was formally establish-  
6 ed by the Treaty of Waitangi in 1840 is very quickly  
7 abandoned in New Zealand and within the first five years  
8 after 1840 there's an attempt to legally institute  
9 private dealings with no supervisory jurisdiction at  
10 all in anything like the Maori Land Court. What you  
11 get with the Maori Land Court is not really the kind of  
12 Crown monopoly on acquisition that we're familiar with  
13 here at all. It can be seen as private dealings and  
14 simply sanctioned by the services of the Maori Land  
15 Court.

16 Q So would it be correct to  
17 to say that when the recognition and conversion scheme  
18 is introduced, the parallel is to a land owner owning  
19 land subject to some kind of trust which may be conveyed  
20 under the general supervision of our Courts?

21 A Well, I have a little  
22 difficulty with the part of your statement that says  
23 "under the general supervision of our Courts" because  
24 I think that suggests a particular kind of institution  
25 to handle this -- what we've been referring to as a kind  
26 of supervisory role. It seems to me that there are sort  
27 of two obvious alternatives here, one of which is to  
28 do something like the New Zealand Maori Court -- Maori  
29 Land Court which in many ways is clearly an English style  
institution and in some of the quotations in my paper



D. E. Sanders  
Cross-Exam by Scott

1 in the section on New Zealand, I quote from Allan  
2 Ward's book of a couple of years ago which describes  
3 that early period and describes it before the Court was  
4 established in the form of a Court. There was a,  
5 in our terms, less formal, less centralized system in  
6 which local Maori leadership played a decisive role in  
7 that process and that Ward's analysis is that in many  
8 ways, it's formalized in European style to facilitate  
9 sales rather -- it's that kind of motivation which results  
10 in making the institution one which is more distant  
11 culturally from the Maoris and in the mainstream of  
12 English traditions.

13 So, it seems to me that the  
14 general choice is how native or how European is this  
15 institution going to be?

16 Q Yes, but leaving aside for  
17 the moment whether this supervisory institution be native  
18 or European, I suggest to you that the scheme, that is  
19 a scheme in which under our law, a trustee submits to  
20 supervision when he sells, for example, the lands of  
21 minors or estate lands or what have you, is parallel  
22 that there's nothing odd, unusual about that in our  
23 system?

24 A Yes. I don't see it  
25 conceptually as being quite the same as the New Zealand  
26 situation in that the -- our concept of trustee is the  
27 trustee sells on behalf of, so that with surrendered  
28 reserve lands in southern Canada, the Crown sells or  
29 leases as trustee on behalf of the band, whereas in  
30 New Zealand what happens is that a private transaction



D. E. Sanders  
Cross-Exam by Scott

1 between one, two, three, four, five Maori owners to  
2 a European, that which is in the nature of a private  
3 transaction is sanctioned. Maybe I'm just being --

4 Q I guess all I --

5 A -- picky.

6 Q -- wanted you to say is  
7 that Canadian, Euro-Canadian law would not regard that  
8 kind of model as foreign in the sense that we have within  
9 our <sup>own</sup> 'law' that kind of scheme in which conveyances of  
10 certain types require supervision.

11 A Fine, I'll agree.

12 Q Even under the <sup>x</sup> fee simple  
13 system.

14 A Certainly.

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D.E. Sanders  
Cross-Exam by Scott

1 Q Well now, let me ask  
2 you one other question, dealing with recognition and  
3 conversion. The implementation of any recognition and  
4 conversion system, it seems to me, has to take account  
5 either to acknowledge, to modify, or to destroy non-  
6 existing non-aboriginal uses.

7 A That's, to say that, I think  
8 is to be somewhat purist about it.

9 Q Well, forget that.

10 A I don't mind.

11 Q Well, let's see if I can  
12 take a practical example, and deal with the New  
13 Zealand system as an existing model. An application is  
14 made, let us say, for recognition and conversion of a  
15 large territory to be held in the name of an aboriginal  
16 community which includes the City of Yellowknife. I  
17 presume that under the New Zealand system those who  
18 hold title in the City of Yellowknife, no matter how  
19 their title is derived, have a right to be heard in  
20 that kind of process.

21 A This -- yes, I think you  
22 get this turning up, the problem of "rights" which have  
23 been acquired prior to the formal implementation of  
24 this kind of system. That was true in New Zealand.  
25 There had been private dealings with Maoris before the  
26 Treaty of Waitangi and before the Maori Land as  
27 an institution came into being. What they did at the  
28 beginning there is really quite a different situation  
29 from what we're facing here now or someone may face  
30 here now. They simply said, "O.K., any private



D.E. Sanders  
Cross-Exam by Scott

1 dealings which have occurred up until now are not  
2 assumed to be valid but the whole thing will be  
3 investigated, so in a sense you create some special  
4 way of looking at that. In one of the tasks that the  
5 Land Titles Commission in Papua, New Guinea  
6 has is the investigation of old claims and there are  
7 claims for some of the towns and cities there which  
8 have some very substantial European populations, so the  
9 question of looking at that is entrusted to the Land  
10 Titles Commission which also handles the recognition  
11 and conversion work. I think what I'm saying is this,  
12 that I don't think there's any sort of obvious political  
13 resolution of that question that I can really speak  
14 to on the basis of the kind of material I've been trying  
15 to describe and I would define it essentially as a  
16 political problem, not to denigrate it in a sense, but  
17 to say that obviously any settlement has as a very  
18 important component of it, defining the relationship  
19 between aboriginal population and the settler population  
20 and at this point in the Northwest Territories we're  
21 not starting with a clean slate.

22 Q What I am merely interested  
23 in getting at is confronted by that problem which is  
24 essentially one of competing claims, as I see it, in  
25 these models you've referred to is the solution political  
26 or is it judicial in terms of the land Court?

27 A The only one I'm familiar  
28 with which would have an experience which could be  
29 comparable would be the New Guinea one and my understand-  
30 ing is that essentially what is done in relation to



D.E. Sanders  
Cross-Exam by Scott

-- they'll have a hearing and sometimes you'll get questions of early acquisition there which you wouldn't have here. I think that the claim there is essentially converted to a claim for compensation other than land for your existing towns and your existing European settlements. European land-holding in New Guinea is now and undoubtedly will continue to be relatively minor in terms of this whole--

Q Doesn't this problem occur in New Zealand?

A Well, the system developed early there and there is almost no settlement in New Zealand prior to 1840, so the instances of acquired rights before 1840 by Europeans is really<sup>a</sup> very minor kind of issue, and Maori title is recognized in New Zealand from the beginning, although there are variations, particularly in the first 25 years, as to exactly how it's handled legally, and the present form is really put in place in 1865. But that is not put into place with any history prior to 1865 of non-recognition. So I think it's for those kinds of reasons that the situation that you're describing here in the Northwest Territories today did not happen in New Zealand.

Q Well, I guess really what I was leading up to is, is there any tribunal in any other jurisdiction with which you're familiar that has developed guidelines for the resolution of this kind of competing claim, and do I understand that the answer is really "No." It either doesn't exist as a



D.E. Sanders  
Cross-Exam by Scott  
Cross-Exam by Steeves

1 problem, as in New Zealand, or it achieves -- it is  
2 resolved by political solution.

3 A Well, it is handled by  
4 the Land Titles Commission in New Guinea. I am not  
5 aware of anything that could be described as legal  
6 principles which have been applied to this situation.  
7 There have been very complex and lengthy hearings  
8 on these questions in relation to specific claims in  
9 New Guinea. That is not a completed process, at least  
10 when I was in New Guinea in '72 there were hearings  
11 going on at that point and it seemed clear that those  
12 particular claims and that particular work of the Land  
13 Titles Commission was going to continue for a while.  
14 They have had a Commission since then, examining some  
15 aspects of the land system in New Guinea, and I haven't  
16 seen the report on that to see whether that talks of  
17 any general guidelines on the particular problem.

18 MR. SCOTT: Those are all the  
19 questions I have. Thank you, Mr. Sanders.

20 MR. STEEVES: Sir, could I ask  
21 one question?

22  
23 CROSS-EXAMINATION BY MR. STEEVES (CONTINUED):

24 Q Mr. Sanders, what is the  
25 issue in New Zealand for this land claim? Is the issue  
26 this, what do you, the owners of these aboriginal rights,  
27 want to do with those rights? It's not in your best  
28 interests and we're not going to approve it, or is in  
29 your best interests and we <sup>will</sup> approve it. Is that  
30 the essential issue?



D.E. Sanders  
Cross-Exam by Steeves

1                   A     That's one issue, it's  
2     not the only issue, because there is also the administra-  
3     tive work of ascertaining the exact native ownership,  
4     which individual people at a particular point, are the  
5     members of the owning group of the piece of land held  
6     under Maori customary land law, because there is no  
7     necessity in these systems to define that, to list  
8     the people to create those titles, as long as the land  
9     is still being used and under customary patterns.  
10    The necessity of this definition comes about when a  
11    conversion is going to occur.

12                   Q     That's a necessary  
13    preliminary to the final decision as to whether or not  
14    this proposed transaction is in the best interests  
15    of the native groups that want to enter into it.  
16    Is that right?

17                   A     Yes, the formal act of  
18    recognition and conversion is a preliminary to the  
19    sale being possible when the sale is possible and an  
20    agreement is reached that the Court has to examine  
21    whether <sup>it considers</sup> that is a fair and reasonable settlement, and  
22    it appears from the literature I've seen that the  
23    reactions of judges on the Maori Land Court has been  
24    rather different as to what criteria they should apply  
25    in judging whether transactions are good or not.

26                   Q     Then essentially the  
27    decisions are arbitrary.

28                   A     Lawyers prefer to call  
29    them discretionary, but that's another term for arbitrary  
30    sometimes.



D.E. Sanders  
Cross-Exam by Steeves

Q I was going to ask you another question. Is it true that you articulated as a student in my firm of Russell and Dumoulin?

A That's correct.

Q How is it we have never met before?

A That was in 1963 and 1964.

Q I thought perhaps it was because we were on different floors.

A It appears that you're more junior in that firm than I am.

MR. STEEVES: Thank you, Mr. Commissioner.

MR. BELL: I notice it's past 12:30 now, sir.

THE COMMISSIONER: All right, well thank you very much, Mr. Sanders. All of us, I think, especially the lawyers, have gained a great deal from your testimony. I don't say that facetiously, I say it quite deliberately and I know I have benefited from it. So let me thank you again.

(WITNESS ASIDE)

THE COMMISSIONER: Mr. Bell, yesterday you were putting people up on those panels and then down again so quickly that you dazzled me with your footwork and I never did have a chance to thank Professor Russell and Father Fumoleau for appearing and for their very worthwhile contributions they made to our proceedings, so perhaps you wouldn't mind passing my thanks on to them, in one way or the



D.E. Sanders  
Cross-Exam by Steeves

1 other.

2 Well, we'll adjourn till  
3 two o'clock then.

4 (PROCEEDINGS ADJOURNED TO 2 P.M.)  
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J. S. Saul  
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

JOHN SHANNON SAUL, sworn:

MR. BELL: Mr. Commissioner,

I'd like to introduce Mr. John Saul who's our next witness.

DIRECT EXAMINATION BY MR. BELL:

Q If I could just take a moment to go through your qualifications Mr. Saul; you are an Associate Professor of Social Science at Atkinson College at York University?

A That's correct.

Q You received a B. A. in 1959 from the University of Toronto an M. A. in 1961 from the University of Toronto, an M.A. in 1963 from Princeton University, and 1964 and 1965 you did specialized post-graduate work on Africa at the University of London.

A That's correct.

Q In 1959 and 1961, you were a teaching assistant in the Department of Political Economy at the University of Toronto.

A Correct.

Q In 1963 and '64, you were a teaching assistant in the Department of Politics at Princeton University.

A Yes, that's right.

Q In 1965 and '66, you were a research associate at the University College, Dar es Salaam in Tanzania.

A That's correct.



J. S. Saul  
In Chief

Q In 1966 and '67 you were an assistant lecturer in the Department of Political Science and Institute of Public Administration at University College, Dar es Salaam in Tanzania.

A That's correct.

Q In 1967 to '69, you were a lecturer in the Department of Political Science and until July of 1968 in the Institute of Public Administration at the same university.

A That's correct.

Q In 1970, you became a senior lecturer in that department at that university.

A Correct.

Q In 1971 and '72 you were a senior lecturer in the Interdisciplinary Program on East African Society and Environment at the University of Dar es Salaam.

A Correct.

Q From 1973 to the present you've held professorial positions at Atkinson College, York University in the departments of Political Science and Social Science and at the Ontario Institute for Studies in Education and the Department of History and Philosophy.

A That's correct.

Q You are the recipient of the awards listed.

A Yes.

Q You are a member of the editorial board of "This Magazine"?



J. S. Saul  
In Chief

1 A Correct.

2 Q And a member of the  
3 editorial board of the "Review of African Political  
4 Economy".

5 A Yes.

6 Q You are also vice-chair-  
7 man of the Ontario Regional Board of Oxfam, Canada.

8 A That's correct.

9 Q You are the author of  
10 the publications listed on page two of the appendix.

11 A I am.

12 Q Would you please proceed  
13 with your evidence sir?

14 A Thank you. I'm glad  
15 to get a chance to speak ahead. I'm very proud of my-  
16 self for having added an additional day to my stay here  
17 on my air fare and I was beginnning to fear that I  
18 might have to plead a plane after all, but in fact,  
19 I'm not in that kind of hurry. So, Mr. Commissioner,  
20 my testimony will discuss certain features of the  
21 realities of nation and nationalism in the Third World.  
22 No attempt will be made to apply my findings directly  
23 to the case of the Dene nation since any such undertaking  
24 would fall outside the range of my own knowledge and  
25 expertise.

26 Nonetheless, this evidence  
27 would not be presented unless I were confident that there  
28 are lessons to be learned from a comparative approach which  
29 can help eliminate and legitimate the Dene claim.

30 First section then. There has



J. S. Saul  
In Chief

been much debate in the scientific literature about what precisely constitutes a nation. A variety of criteria have been suggested, most prominently the existence of a common history, territory, culture and language. Yet there has been a great variation in the applicability of these criteria to the peoples who have successfully asserted their claim to nationhood in the past 50 years.

This has been particularly true for peoples who <sup>have</sup> lived until well into this century under colonial or semi-colonial conditions and who have economies both poor and underdeveloped; the peoples of the so-called Third World.

Some such peoples have a centuries old experience of commonality, e.g. China and certain other Asian countries. Some have only very limited common experience arising from their original inclusion as tribes within the arbitrary boundaries established by European colonialism, e.g., most parts of Africa. For the latter, their nationalism is as much a matter of aspiration as it is one of established fact, but this does not make it any less real or important. Indeed, in much of Africa, the very process of asserting nationhood has often been a crucial process in deepening the awareness of the mass of the population concerned, as to their participation in the nation and as to the new opportunities which such participation offers them.

Therefore, the first point suggested by Third World experience is that a semantical



J. S. Saul  
In Chief

1 exercise designed to define the essence of a nation or  
2 designed to measure any given people against such a  
3 criterion is beside the point.  
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J.S. Saul  
In Chief

A nation is, quite simply,  
which  
any group demands to be treated as such. Of course a  
common history, territory, culture and/or language are  
very important, as is a shared experience of oppression  
and exploitation. These common features can help give  
focus, meaning and strength to the efforts of the  
peoples involved. The presence of such attributes can  
also help to convince outsiders to accept the claim  
to nationhood which is being made. But in the third  
world it has been the demand itself which has been of  
primary importance, and the success of previously  
subjugated peoples in having their demand accepted.  
In consequence, what the remainder of this testimony  
will focus upon is, firstly, the very good reasons why  
the demand to be treated as a nation has been  
made by Third World peoples, and secondly, some of the  
results and implications of that demand having been  
made.

I begin Section II by quoting  
a poem recently written by a nationalist poet in  
Mozambique which obtained its independence last year  
in 1975 from the Portuguese. I'll read that poem:

"Enough of these massacres

I have suffered for five hundred years

I can bear it no longer

This forced labour.

I suffered on the railways

in the fields of cotton

in the timber mills and on the sisal plantations



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In Chief

1 I can bear it no longer

3 I can bear it no longer

4 this was the cry of the people  
5 of those who have suffered  
6 since the first day of the invasion

8 The people say: Enough."

9 The period since the Second  
10 World War has seen the dramatic rise of nationalism  
11 in the Third World.. The reason is simple. The concept  
12 of the nation and the political reality of nationalism  
13 have proven to be the most effective tools for resisting  
14 continued European hegemony in colonial and semi-  
15 colonial areas of the world and for winning independence.  
16 Other methods have been tried. When European imperialists  
17 first began to arrive in Africa, for example, there  
18 ensued in virtually every territory a period of warfare,  
19 termed by historians as the period of "primary  
20 resistance" on the part of the peoples about to be  
21 colonized. After such initial resistance had been  
22 crushed by the military might of Europe, the indigenous  
23 population was, <sup>either</sup> marginalized or forced into playing a  
24 subordinate role within the overarching imperial  
25 economy and society. In the words of Amilcar Cabral  
26 of Guinea-Bissau (Africa's outstanding nationalist,  
27 activist and theoretician, until the time of his  
28 assassination by Portuguese agents in 1973), what  
29 was happening to the "dominated people" was quite



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1 simply "the negation of its historical process".

2                   Indigenous populations contin-  
3 ued to try various means of regaining a measure of  
4 autonomy and independence; for example, there was a pat-  
5 tern of sporadic (and usually much too isolated) acts  
6 of resistance

7                   THE COMMISSIONER: Excuse me.

8                   A       Sorry.

9                   Q       Just going back, you said  
10 the indigenous population was either marginalized or  
11 forced into playing a subordinate role within the over-  
12 arching, etc. I think I know what you mean by "margin-  
13 alized" but maybe you just better make it explicit.

14                  A       What I was thinking of  
15 there was the difference between people who are  
16 pushed to the margin of society, crowded into reserves,  
17 etc., as opposed to people who were subjected to forced  
18 labor, forced agriculture to service in a productive  
19 way       the economy, and there tended to be a variation  
20 in the Third World as to what role was defined for  
21 people in that sense. Does that get at it?

22                  Q       Yes. In other words,  
23 if you had to apply one of those terms to the native  
24 people in Canada, you would say they were marginalized,  
25 is that it?

26                  A       I would -- again not  
27 claiming any particular expertise in that area,  
28 that would seem to be more the pattern say than with  
29 the case of the African population in most of Africa  
30 where they were constrained to enter the economy in a



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1 subordinate but productive manner, in a different way.  
2 Now I think in the fur trade period, again speaking as  
3 a layman on these matters, you do get a different  
4 role for the native people, but possibly in a later  
5 stage there may be other witnesses who will bear this  
6 out. You get a slightly different role that they are  
7 consigned to.

8 Q Right, fine.

9 A Let me pick up now --  
10 and there were attempts at assimilation, with the  
11 consequent (but limited) advancement of a few indigenes  
12 within the alien system. Yet isolated acts of resistance  
13 proved futile and assimilation failed in any significant  
14 way to alter the broader structures of exploitation and  
15 oppression which the population as a whole faced in  
16 each territory. It also denied too much of the past  
17 of the peoples concerned to be acceptable to them. In  
18 the twilight years of colonialism, Third World peoples  
19 were showing themselves prepared to build for the  
20 future in "modern ways," but only in terms recognizeable  
21 to them and which they defined for themselves. To a  
22 new generation of leaders -- and ultimately for the  
23 broader population as well -- the nation seemed to pro-  
24 vide a framework, large enough and focused enough  
25 within which they could finally realize their  
26 goals. As Cabral put the point in the essay already  
27 cited,

28 (QUALIFICATIONS & EVIDENCE OF J.S. SAUL  
29 MARKED EXHIBIT 570)



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1 "national liberation is the phenomenon in which a  
2 given socio-economic whole rejects the negation  
3 of its historical process. In other words, the  
4 national liberation of a people is the regaining  
5 of the historical personality of that people, its  
6 return to history through the destruction of the  
7 imperialist domination to which it was subjected."

8 Of course, the choice of the  
9 nation by Third World peoples as a primary instrument  
10 in their drive for liberation and self-realization was  
11 partly a result of the way in which the outside world  
12 was structured. Even where the nation as such was a  
13 relatively alien European concept, its construction  
14 seemed a necessary achievement in order to deal effective-  
15 ly with the generally hostile and aggressive external  
16 environment. An environment which was, of course,  
17 organized into nations. As Basil Davidson, one of  
18 the most sensitive contemporary writers on African history  
19 has observed, this lesson began to be learned by some  
20 quite early in the colonial epoch:

21 "Become nations or you cannot become free. In  
22 some such imperative as this the European message  
23 reached African ears, decade after decade through  
24 a multitude of more or less skeptical exhortations.  
25 A people without history and a people without  
26 history could have no identity and therefore, no  
27 real claim on that dignity and self-respect which  
28 even the poorest European peoples had successfully  
29 acquired for themselves. The lesson was to be  
30 well learned."



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1 In this way, the achievement of national status was  
2 seen to have become in a world of nations a sine qua non  
3 for having one's grievances and aspirations taken  
4 seriously.

5 The decision to act on this  
6 latter assumption has proven to be quite correct tactical-  
7 ly, off that there can be little doubt. Nonetheless,  
8 there has been a great deal more to Third World national-  
9 ism than merely tactical considerations. As

10 Davidson goes on to affirm for the African situation:

11 "The case is clear, nationalism in Africa today is  
12 primarily a claim for equality of status and of  
13 rights; for personal dignity, self-respect, full  
14 participation in the things of the material world  
15 as well as in the things of the spirit. A consistent  
16 effort to rescue Africans from their condition of  
17 acquired inferiority to which they have been  
18 relegated through the years and this is everywhere  
19 true."

20 This quotation is a useful  
21 evocation of the positive attributes of successful  
22 nationalism. It touches on the three spheres in which  
23 the promise of nationalism is making a substantive  
24 contribution to the betterment of Third World peoples  
25 can be seen to lie: the political, the cultural and  
26 the economic.

27 The potential political contri-  
28 bution of nationalism is the most obvious. A successful  
29 nationalism generally means the establishment of a  
30 political entity with a significant new degree of self-



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determination. Can there be any disagreement with the argument that self-determination is better than subjugation to imperial dictate for the peoples of formerly colonial or semi-colonial countries? The assertion of the demand for independence may also have the effect of releasing the creative energies of increasing numbers of people in the nation concerned. To be sure, this has not always happened, but the independent nation has provided at least the potential forum for increasing democratization which by definition, a continued imperial framework could never provide.

Moreover, even the very political process involved in staking the new nation's claim to recognition has tended to have a profoundly democratizing effect, as many new people are drawn for the first time into active involvement in shaping their own destinies.

This is something which I witnessed for myself when I visited the liberated areas of Mozambique in 1972 during that country's struggle for freedom against the Portuguese colonial power. There too, I witnessed the manner in which nationhood can also help transcend the most parochial of tribal loyalties, the latter often focusing attention on units too isolated and narrowly traditional to facilitate a fully effective political mobilization against the external agents of oppression.

The cultural contribution of nationalism can also be great, just as the need for some such contribution is itself overwhelming. The cultural and



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pyschic depredations of conquest and imperial control have been well documented by writers like Cesaire, Memmi, James, Cabral and Fanon; those who have themselves sprung from a colonial background and who have been able to reflect profoundly upon such themes. Significantly, the outstanding African nationalist leader, Samora Machel, echoed precisely these writers' themes in a speech presented on the occasion of his inauguration as President of the New People's Republic of Mozambique in June 1975 (Mozambique having become independent after more than ten years of struggle against Portuguese colonialism):

"It was in order to keep our people subjected to its domination that colonialism tried -- in some cases, particularly in the urban areas with some success to destroy our personality, sow division, and create a slave mentality toward the foreigner.

Assimilation was not merely the fascist caprice of a senile dictator (Salazar) but was in fact mental enslavement to the foreigner in its purest form, a deliberate process of negating all the culture, history and traditions of our people. A man thus spiritually destroyed became a living corpse, a docile receptacle for the colonizers' way of thinking, acting and living. This is the heritage we are reaping today."

With "our traditions humiliated, our civilization negated", a situation was created in which and this is Samora Machel speaking again:

"Alcoholism was made widespread and prostitution



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and the disintegration of the family --"  
and the like. Terrible problems, but ones with which  
a free Mozambique can now at least begin to deal.

The practical response of  
Samora Machel and his colleagues in Mozambique to many  
of these problems has been the same as that suggested  
by Frantz Fanon in his well known book, "The Wretched  
of the Earth": to provide the stimulus for the rebirth of  
a national culture. Such a culture could hope to blend  
the best and most relevant of traditional values with  
the concern for contemporary reality and contemporary  
problems. In fact, just such a humane blend as is  
rejected by definition by the architects of assimilation.

As Fanon enjoined his fellow  
Third World intellectuals, tempted by individual rewards  
attendant upon their assimilation:

"We must work and fight with the same rhythm as  
as the people to construct the future and to  
prepare the ground where vigorous shoots are already  
springing up. A national culture is not a folklore  
nor an abstract populism that believes it can  
discover the people's true nature. A national  
culture is the whole body of efforts made by a  
people in a sphere of thought to describe, justify  
and praise the actions through which that people  
has created itself and keeps itself in existence.  
A national culture in underdeveloped countries  
should therefore take its place at the very heart  
of the struggle for freedom which these countries  
are carrying on."



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Nor is the evocation of such a possibility in any way a speculative one. Among the most extraordinary things which I witnessed for myself in revisiting Mozambique in June 1975 for that country's independence celebrations was the extraordinary display of creative energies released in the cultural sphere. In all sectors of the population and literally in all the art forms which one could imagine, by the fact of freedom.

For a previously defeated and disoriented people, the pride of accomplishment and sense of possibility which a successful nationalism engenders has often been such as to set them again on the road to significant accomplishment in every sphere.

What finally of the economic contribution of nationalism? Julius Nyerere, President of Tanzania and one of the most innovative of Africa's post-war nationalists has put one important point clearly in his essay "Economic Nationalism":

"Surely if it is reasonable or understandable that Britain, Canada and France should protect their strong economies against domination by the even stronger American economy, it is also reasonable that Africa should be concerned about these matters. The fact that our national economies are weak does not alter things. On the contrary, the fact that we are underdeveloped makes such industry as does exist the more vital to our future. It becomes more essential not less, that our major means of production should be under the control of the people and that the people's representatives should



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determine the policies followed.

As I have said, this economic nationalism has nothing to do with the ideologies of socialism, capitalism or communism. It is universal among nation states. The time and the method of securing such control where it does not already exist will vary, but it would be absurd to expect the people -- to expect Africa to accept that the well-being of its people should be indefinitely controlled from outside. Whatever economic system the peoples of different African countries eventually adopt, it is quite certain that sooner or later, they will demand that the key positions of their economy are in the hands of their own citizens."

Nor is this merely a question of control for its own sake. The argument must be placed in the context of a virtual flood of recent studies of the political economy of dependency which have proven, at least to my satisfaction that the unalloyed economic impact of advanced capitalist economies upon the economically backward parts of the world has had and continues to have disastrous consequences.

Quite simply, there is no invisible hand which dictates equitable distribution and evenness of development in the world economy. The evidence is incontrovertable. Then as has, those at the center of the system who are rich and capital, technology and power, then as has, gets. It is perfectly true that in such an unbalanced world, not all of the new nation states, perhaps not even the



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1 majority have managed to defend their people against  
2 the kind of economic polarization between center and  
3 periphery, metropole and hinterland which characterizes  
4 empirically the functioning of capitalism on a world  
5 scale.

6 Obviously, under such  
7 circumstances, national control only makes a contribu-  
8 tion if it goes beyond being merely formal and nominal.  
9 Nonetheless, what is equally clear is that without a  
10 national focus and a national presence Third World  
11 people would be entirely defenseless against imperial  
12 dictate and subordination, as defenseless as they were  
13 under colonialism. Crystallization of a nation has  
14 proven to be a necessary though not sufficient condition  
15 for economic development in the modern world.

16 Section three then. This  
17 last point warrants further discussion. As a growing  
18 body<sup>of</sup> writers have argued in recent years a nationalist  
19 assertion can also manifest some severe weaknesses  
20 when measured against what is actually necessary in  
21 order to deal with the problem of underdevelopment.  
22 Thus, the most eloquent chapter in the book by Frantz  
23 Fanon cited above, one which precedes his stirring  
24 chapter on the virtues of national culture, which  
25 I cited earlier, is entitled precisely, "The Pitfalls  
26 of National Consciousness". Here, Fanon points out  
27 very clearly that many nationalisms have been unduly  
28 preoccupied with merely the winning of formal political  
29 independence and that such a narrow preoccupation can  
30 have a number of negative consequences.



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1                   It can, for example, give such  
2 an appearance of achievement that other pressing questions  
3 concerning cultural integrity and indigenous economic  
4 control will tend to be overlooked. Indeed, President  
5 Nyerere of Tanzania has gone so far as to argue that:

6           "It is comparatively easy to get independence from  
7 a colonial power especially one which claims to  
8 base its national morality on the principles of  
9 freedom and democracy. Everyone wants to be free  
10 and the task of a nationalist is simply to rouse  
11 the people to a confidence in their own power of  
12 protest."

13 But to build real freedom, in Nyerere's terms is quite  
14 a different matter and Nyerere observes that unless the  
15 goals of the nationalist movement are broadened and  
16 deepened:

17           "--the anti-colonial struggle will almost certainly  
18 have intensified the difficulties"  
19 of realizing such "real freedom".

20                   Related to this, nationalism  
21 leading to "independence" has often had the concrete  
22 result in the Third World of bringing into the formal  
23 positions of power and authority indigenous elites who  
24 remain culturally and economically identified with the  
25 status quo and the imperial system. Such a "false de-  
26 colonization" can involve merely an Africanization or  
27 Asianization or the like of the prevailing local power  
28 structure, with little alteration in the lot or prospects  
29 of the ordinary people of the society flowing from such  
30 an apparent transformation.



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1 It is not surprising that in  
2 1967, Nyerere:

3 " Warned that the people should not allow their  
4 freedom to be pawned as most of the leaders were  
5 purchasable.



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He warned further that in running the affairs of the nation the people should not look on their leaders as saints or prophets. The President stated that the attainment of freedom in many cases resulted merely in the change of colors, white to black faces without ending exploitation and injustices, and above all without the betterment of the masses."

THE COMMISSIONER: Excuse me. Where does that quote from President Nyerere end? It begins on the top line "warned".

A Yes, right down to the closing of the quote, it's all his quote. It's a quote from a newspaper.

Q Oh, down to "the masses".

A That's right.

It's a newspaper account of a speech that he gave in 1967.

Fanon, in emphasizing a parallel dimension of this reality, has been equally eloquent:

"The national middle class discovers its historic mission: that of intermediary. Seen through its eyes, its mission has nothing to do with transforming the nation; it consists prosaically of being the transmission line between the nation and a capitalism, rampant though camouflaged, which today puts on the masque of neo-colonialism.

The economic channels of the young state



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sink back inevitably into neo-colonialist lines. The national economy ... is literally controlled. The budget is balanced through loans and gifts, while every three or four months the chief ministers themselves or else their governmental delegations come to the erstwhile mother countries or elsewhere, fishing for capital."

In short, newly independent nations which have been structured on this kind of basis have become the prey both to stronger economic centres and to the aggrandizement of indigenous elites. On the one hand this has meant a leadership much more closely aligned with its international partners than with its own people, and in consequence an increasingly authoritarian direction for many new nations. On the other hand, as hinted above, it has meant that multinational corporations which dominate the international economy have had great success in bending such nations and in particular such elites, to their will. And the results have been predictable. We might cite here another source to reinforce the picture sketched in the previous section. Thus a series of articles in so unradical a forum as "The New Yorker" (and subsequently published as the widely read book "Global Reach" by Richard Barnett and Muller) noted unequivocally that:

"The negative impact of global corporations on living standards, employment rates and economic justice has occurred despite the fact that many corporate officials would like it to



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1       be otherwise and believe that it can be.

2       The unfortunate role of the multinational  
3       business in maintaining and increasing  
4       worldwide poverty results primarily from  
5       the dismal reality that global corporations  
6       and poor countries have different -- indeed,  
7       conflicting -- interests, priorities and  
8       needs. The primary interest of the corporation  
9       is profit maximization, and this means that it  
10      is often advantageous for the balance sheet if  
11      income is diverted from poor countries. Eager  
12      as they are to be good corporate citizens, the  
13      managers owe their primary allegiance to  
14      company shareholders. Their businesses, they  
15      like to say, are neither charities nor welfare  
16      organizations, although some do devote modest  
17      resources to good works. The claims of the  
18      global corporations rest instead on the theory  
19      of the market place which says in effect that  
20      by enriching themselves, they enrich the whole  
21      world. This, unfortunately, has not been the  
22      reality."

23                               The new nation seriously  
24      interested in development must be one which can  
25      articulate firmly its different "interests, priorities  
26      and needs" and make them stick.

27                               It becomes clear then that  
28      possession of formal political independence by a  
29      people is no guarantee of economic progress. This is  
30      why the more sophisticated and dedicated nationalists



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1 in the Third World and writers and actors like Fanon and  
2 Nyerere remain committed to the goal of nationhood in  
3 Africa and elsewhere, whatever their criticisms of  
4 established practice, <sup>why they</sup> have begun to lay more and more st-  
5 ress on cultural and economic dimensions of the struggle  
6 and on the need for internal democratization. I revert  
7 once again to my own experience with the nationalist  
8 movement in Mozambique. Precisely this kind of emphasis  
9 has enabled Marcelino dos Santos, Vice-President of  
10 that country, to distinguish what he terms "primitive  
11 nationalism" from the much more relevant and radical  
12 kind of nationalism which has gradually taken shape  
13 in his country and which has begun to face up to the  
14 broader kinds of challenges we have been discussing.  
15 To be sure, such nationalists as dos Santos have also  
16 sought a very high degree of political autonomy. Non-  
17 etheless the point stands out that the formalities  
18 of such independence are increasingly seen to be much  
19 less important than the actual substance of autonomy,  
20 control and self-realization.

21 And the conclusions. As noted  
22 at the outset, an attempt to apply the lessons of Third  
23 World experience in any kind of systematic way to the  
24 case of the Dene would involve a great deal of specula-  
25 tion on my part. In conclusion I would merely advance  
26 the following observations:

27 1. The apparent coherence, in terms of history,  
28 territory and culture, of the Dene as a nation is  
29 important but in any case merely strengthens a claim  
30 by the native people to guarantee their self-defence via



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1 nationhood which is solid on other grounds.

2 2. These other grounds are immediately evident from  
3 a comparative analysis of Third World nationalism.

4 This analysis suggests that for people like the Dene  
5 who have been defeated and colonized, the claim to  
6 nationhood has been a necessary, though not sufficient  
7 condition to their reclaiming the political, cultural  
8 and economic autonomy which they require in order to  
9 achieve development.

10 3. In light of Third World experience of the weaknesses  
11 as well as the strength of nationalism, the refusal of the  
12 Dene to fetishize formal independence or "separatism"  
13 (as some hostile critics have attempted to portray  
14 their position) and instead to concentrate their atten-  
15 tion upon the winning (and institutionalizing) of  
16 sufficient autonomy to guarantee cultural integrity,  
17 economic power and the basis for the genuinely  
18 democratic control over their own lives by the peoples  
19 concerned is completely logical and fully justified.

20 Thank you.

21 MR. BELL: A copy of Mr.  
22 Saul's summary and appendices thereto has been filed  
23 as an exhibit. Mr. Saul is now available for cross-  
24 examination.

25 MR. SCOTT: Mr. Sigler, I  
26 think Mr. Bayly isn't here. Have you any questions?

27 MR. SIGLER: No questions,  
28 sir.

29 MR. SCOTT: Mr. Hollingworth?

30 MR. HOLLINGWORTH: No questions.



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MR. SCOTT: Mr. Steeves?

MR. STEEVES: I have no questions.

MR. SCOTT: And I have none,  
thank you.

THE COMMISSIONER: Well, thank  
you very much, Mr. Saul. I certainly appreciate  
your coming and presenting your paper, and we will  
all be reflecting upon it and thinking about it over  
the next week or so. Thank you, sir.

Oh, by the way, Professor Saul,  
just before you go, maybe you could just spare a  
moment for me. I had one or two questions.

Q This -- many of these  
countries in Africa which is your own particular area  
of expertise, it appears to someone like myself who  
reads about these countries in magazines and so forth,  
that the majority of people by far live entirely out-  
side the industrial system. For instance, if you  
take a country like Zaire, I read recently somewhere  
that they were in economic difficulty and the budget  
wasn't balancing and so forth and so on, and they  
were going to the World Bank for a loan. Well, would  
that make any difference one way or the other to the  
millions of people in Zaire who don't live in Leopold-  
ville or Kinshasa -- is that the same place?

A Same place.

Q It's something that  
affects the president and his entourage and a fairly  
limited middle class established in, I suppose, the  
only urban centre in the country. But to the majority



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1 of the people living out presumably in villages and  
2 in the bush would it make any difference at all  
3 if the country went bankrupt?

4 A In Zaire the social  
5 structure is such that it probably wouldn't make any  
6 great difference because in some senses it would  
7 vary from region to region and it is a vast country  
8 and there are areas, for example mining areas in the  
9 south where there is migrant labor to those mines,  
10 etc. It's also the case that even though say in  
11 many of these countries 95% of the population is in  
12 the rural areas, nonetheless insofar as they have  
13 cash incomes, they come from the production of  
14 primary products that are sold in one way or another  
15 through the system. Now because they are close to sub-  
16 sistence in many cases, even if they are involved in  
17 the cash economy to some extent, they can fall back  
18 on subsistence. It means of course that the quality of  
19 their life doesn't improve and if there is population  
20 pressure on the land it may go backwards. But it is  
21 true in a country like Zaire where you have, I think,  
22 it's fair to say, quite an exploitative elite, that  
23 the World Bank money primarily goes to service their  
24 interests.

25 Now there would be other  
26 countries where the situation would be different. I  
27 don't want to get into the merits and demerits of the  
28 World Bank. That's a controversy in itself, but say  
29 aid from some particular source, in a country like  
30 Tanzania where there has been an attempt to



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transform the quality of life in the rural areas in a much more serious way, than where in Mozambique where one of the first tasks that the new leadership set themselves to try and transform rural life and to develop a political system that doesn't stand in the way of that kind of policy by skimming off surpluses for the elite, etc., then a certain amount of money of that sort might help and the problems that the economy might be having because of <sup>fall of</sup> prices, etc., would have a negative effect on the prospects of those people because there would be programs entrained, designed to in fact further liberate them. So it depends a great deal again, comparing Zaire with Tanzania, with Mozambique is really comparing apples and oranges even though they are both in Africa because the structure of the kind of nation that they are, the kind of economic structure they are building are so entirely different.

Q Well, let me -- in the "New York Review of Book "; it's a periodical and I think I've got the right name not the "New York Times," the "New York Review of Books", there was a series of articles last winter by a man named Geoffrey Barraclough. I don't know if that means anything to you, but he had a theory that was very interesting. He said there were people in these Third World countries that had, upon achieving independence, asserting their national -- asserting their nationhood in that, in the strictly political sense, had then embarked on seeking to emulate the west.



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1 A M-hm.

2 Q That is they had gone  
3 in for cash crops they could export and so on and  
4 so forth, coffee and cocoa , things of this sort,  
5 and that they had neglected their own agriculture,  
6 their own self-sufficiency. They had sought to emulate  
7 not only the west, but the Communist countries as well  
8 by building up industry and even heavy industry and  
9 so forth, seeking to reproduce in Africa, New York and  
10 Moscow, presumably. His theory was that they had  
11 made a mess of it in that with crop failures and one  
12 thing and another, and the increase in the price of  
13 foodstuffs of various kinds on the market and the  
14 dropping of the prices they were getting for some of  
15 their cash crops, that they were in many cases facing  
16 very difficult times. Is that a -- I know you can't  
17 apply this to everybody. My impression was that that  
18 was a mode of development in many of these new  
19 African nations that sought to pursue and that Nyerere  
20 for instance was one who had declined to proceed along  
21 that mode, and <sup>had</sup> instead opted for agricultural self-  
22 sufficiency without pursuing industrialism. I'm sure  
23 this is all put in terms that you would reject from a  
24 first year student, but--  
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J.S. Saul  
Cross-Exam by Commissioner

A I think the important point to make, though, is it is not that this is something that these countries have set themselves up to do from a standing start. I think the crucial point, and I suppose this is where the discussion of, we come back to the discussion of the pipeline in effect, is that these economies were structured over the years of colonialism with precisely those kind of biases. The new leadership didn't inherit an economy that was completely untouched. It inherited one in which the bias of the economy was precisely towards exporting already those crops. In Mozambique, for example, one of the things that the liberation movement set itself against from the early '60s was precisely the investment of capital by the Portuguese into this huge hydro-electric project at Cabora Bassa which they said doesn't service our needs. One of the reasons we have to win independence fast is to stop them from sinking so much capital into that project, which we would like to have a say in. We might decide <sup>in fact</sup> that we are skeptical and might decide that's something we don't want to spend our money on or see our land, in this case Tete Province, which I visited in Northern Mozambique, turned over to this kind of project involving a shift of population, the flooding of land, etc. I think the major point is that these new nations have of course inherited a history which has been mainly one of warping their societies to service precisely those kinds of needs that express themselves in cash crop production, etc., deepening that kind of process, which seems in



J.S. Saul

C ross-Exam by Commissioner

run  
1 short<sup>run</sup> the easiest thing to do, just do more and better;  
2 but in fact as Nyerere and others have said, a self-  
3 defeating kind of process. This is again why I emphasize  
4 the expectations of the elite, etc., the extent to  
5 which the colonial powers<sup>has</sup> had a cultural and other  
6 kind of impact, because the elites often do define  
7 progress in western terms which I think economists  
8 even are coming to agree are not necessarily the  
9 most appropriate ones.

10 Q The national air lines  
11 and that sort of thing.

12 A This sort of thing, you  
13 see, and that a more self-reliant -- and this is the  
14 emphasis in your area, or Samora Machel  
15 are attempting now to develop, a more self-reliant  
16 growth that in the first instance builds upon the  
17 subsistence capacity of the existing society so you  
18 don't get into this food shortfall situation, and then  
19 it goes on from there, that having made sure you're  
20 developing an economy that makes sense internally, there  
21 are linkages that keep that economy on an even plain  
22 then you<sup>can</sup> begin to think of further development projects.  
23 But the external stimuli, if you just allow yourself  
24 to submit to the external stimuli that have been created  
25 over several centuries, you're reinforcing the kind of  
26 negative situation that you<sup>were</sup> under during the colonial  
27 period. This is quite crucial and it's for that reason  
28 that people like Nyerere and Fanon question the exclusive  
29 raising of the question of political independence, formal  
30 institutions of politics. Independence is really about



J.S. Saul  
Cross-Exam by Commissioner

creating a self-reliant economy that may insist upon or request inputs of capital, etc., from various sources, private and public, but will do it on terms that make sense to it in terms of a long-term strategy of retaining a kind of internally logical dynamic that fits into relationship with prevailing cultural patterns and changes then as time and circumstance permits; but also gets out from under this economic weight of the colonial pattern. I think that's the major single variable; is that kind of history that repeats itself, unless the new nation is prepared to raise a set of fundamental questions beyond the question of mere independence. It's a theme that comes out of Nyerere's writings, the Morris writings, etc., and a very crucial one, I think. There's no doubt that most countries in the Third World attended under the blandishments, of course, of the World Bank, etc., because it is these institutions that tend to present the option of further cash crop production, and the World Bank is not notorious for being interested in self-reliance. They are much more interested in developing economies that continue to service that historical role in a more subtle way. But as I say, that's a somewhat different debate.

Q Right.

A But I think the point is, where that kind of development has been questioned, you get a kind of nationalism that begins to deal over a broad front, with all of the dimensions of dependency and colonialism that have been geared into these



J.S. Saul  
Cross-Exam by Commissioner

societies over the many years of their subordination.

Q You said that on page 9, the third paragraph, you say that:

"It is perfectly true that in such an unbalanced world not all of the new nation states, perhaps not even the majority, have managed to defend their people against the kind of economic polarization between centre and periphery, metropole and hinterland which characterizes empirically the function of capitalism on a world scale."

Are those expressions, which we've heard from time to time at the Inquiry, the question of the metropolis and the hinterland, are those now terms of art in economics or sociological studies, or are they words that should be understood in the way that most of us in this room understand them?

A Well, I think they have become words that are used by people who would say they were making scientific analyses, but the use, I think, would also remain somewhat close to the common-sense use as well in that sense. There are people who have done quite careful analyses which attempted to give those words a very concrete and substantive meaning, I think successfully, so that they are not merely metaphorical terms but ones that do relate to, you know, do evoke a reality and I think, you know, probably people on the whole, the words do evoke themselves even in a common sensical way, that reality.

THE COMMISSIONER: Well, thank



J.S. Saul

Cross-Exam by Commissioner

1 you. Sorry I didn't mean, when I mentioned the "New  
2 York Review of Books" I wasn't preening myself now.  
3 I just wanted to make sure I had the name of that  
4 periodical right and I always confuse it myself with --

5 A I think that's the one,  
6 I remember those articles.

7 THE COMMISSIONER: Well, thank  
8 you very much, sir.

9 A Thank you.

10 (WITNESS ASIDE)

11 MR. BELL: That concludes our  
12 second panel, sir. Perhaps we could have a five-  
13 minute break to set up for the third.

14 THE COMMISSIONER: O.K.

1 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)  
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Bean, Barnaby, Kurszewski,  
Cheezie  
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: All right ladies and gentlemen, let's come to order.

WILF BEAN  
GEORGE BARNABY, resumed  
GEORGE KURSZEWSKI  
GERRY CHEEZIE, sworn

MR. BELL: I'd like to introduce our third panel to you Mr. Commissioner. Starting at the right is Mr. George Barnaby. Beside him is Mr. Gerry Cheezie and beside him is Mr. George Kurszewski and Mr. Wilf . Bean on the left end.

DIRECT EXAMINATION BY MR. BELL:

Q Mr. Barnaby, you are a hunter and trapper and a resident of Fort Good Hope.

WITNESS BARNABY: Right.

Q You've been a hunter and trapper for many years, I understand.

A Yes.

Q In 1970 and '71 you were the co-op manager at Colville Lake?

A Yes.

Q In 1972 to '74, you were a settlement secretary at Fort Good Hope.

A Yes.

Q From March 1975 to March 1976, you were a member of the Council of the Northwest Territories?

A That's right.

Q Mr. Cheezie, you are the chief of the Fort Smith and Fitz Indian band?



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Kurszewski, Cheezie  
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1 Mr. Kurszewski, you are the President of the Fitz-Smith  
2 Metis community?

3 WITNESS KURSZEWSKI: That's  
4 right.

5 Q I understand that until  
6 recently, that was known as the Fort Smith local of  
7 the Metis Association.

8 A That's true.

9 Q Mr. Bean, you are at  
10 present a band development consultant for the Indian  
11 Brotherhood of the Northwest Territories?

12 WITNESS BEAN:

13 A Yes.

14 Q You obtained a Bachelor  
15 of Arts in 1967 from the University of Waterloo? In  
16 1970 and '71 you undertook graduate studies at Memorial  
17 University in St. John's, Newfoundland specializing in  
18 sociology and the anthropology of Northern Canada.  
19 In 1971 you were doing research in Fort Simpson.

20 In 1968, you were the Acting  
21 Area Administrator of the Department of Indian and Northern  
22 -- Indian Affairs and Northern Development at Cambridge  
23 Bay in the Northwest Territories?

24 A Yes.

25 Q In 1969 and '70 you were  
26 area administrator at large for the Government of the  
27 Northwest Territories, Fort Smith region.

28 A Yes.

29 Q In 1971 and '73,  
30 you were Settlement Manager, Government of the Northwest  
Territories at Coppermine, Northwest Territories?



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A Yes.

Q From 1973 to 1975, you were a Regional Development Officer of the Department of Local Government of the Government of the Northwest Territories, Inuvik Region?

A Yes.

Q From June of 1975 to the present, you've held your present position?

A Yes.

Q I'd like to call on Mr. Barnaby to speak first.

(QUALIFICATION AND EVIDENCE OF GEORGE BARNABY  
MARKED EXHIBIT #571)

WITNESS BARNABY: Thank you. Mr. Commissioner. Land claims of the Dene is a claim not only for land but also for political rights. Up to this time, the native people have had no say in what's happening on their land. Everything has been decided by Ottawa or a few people in Yellowknife.

This does not apply to development on the land only but also in the way we live. Laws are made by people from the south that do not make sense to us, but which we have to live by. These laws are to serve the system of the south. They are not laws to protect the Dene way of life.

The land claim is our fight to gain recognition as a different group of people with our own way of seeing things, our own values, our own lifestyle, our own laws. The land claims is a fight for self-determination using our own system with



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which we have survived till now. This system is based on community life whether it be a settlement or a trapping camp, whether people live by working in a wage economy or off the land. The laws we follow are concerned with all the people, not to benefit the few at the expense of the rest.

Sharing with others is one of our laws. People are expected to share. The ones that have a lot always share with the rest of the people. A person will never have to go hungry for instance as other people will give what they could spare. A person who could afford an outboard motor or skidoo helps someone who needs help to move out in the bush.

Respect for the old people is another law, since all the laws come from the teaching by our elders, from stories that give us pride in our culture, from training since we are young we learn what is expected of us. Without this learning from the elders, our culture will be destroyed.

The way decisions are made is another law. No one can decide for another person. Everyone is involved in a discussion and a discussion made by everyone. Decision made by everyone. Our way is to try and give freedom to a person as he knows what he wants. When working for instance, a person should not be forced into anything. Supposing he wants to go trapping for a while. The system should be flexible enough to allow this. There should be a choice.

Our life is part of the land.  
We live on the land and are satisfied with what we get



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from it. No one person owns the land. It belongs to all of us. We choose where we want to go and our choice is respected by other, whether in the settlement or in the bush. We have no word in our language that means "wilderness", as anywhere we go is our home. It does not make sense to destroy your home.

People love to live in the bush and it is a part of our culture. These are a few examples of the culture of the Dene: the system of government, the laws, the way we differ from the southern system and people.

The Territorial Council is one place where Dene law is not respected at all. There is very little involvement by the people. The laws that are passed have no importance for the people, but they are forced to follow these laws. The whole system is from the south and they are trying to fit us into it.

A lot of times, the topics that are being discussed are not understood by all the councillors. The effects of passing laws are not understood. The language that is used is not understood. The procedures and formality is confusing. Most of the time, rather <sup>than</sup> look stupid, we just agree. As most of these discussions concern only the southerners. If they choose to live that way, it's up to them I think.

The first session I went to, we spent two weeks on ordinances that had no importance to the people I represent. At this time, I asked for more control for the communities. This was voted down. I don't know why. Since the Territories is a big land



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1 and people want different things in different places,  
2 one thing it might have done was reduce the size of the  
3 Territorial Government as people would do more of the  
4 planning and carrying out of programs for themselves.

5 But even if all agreed the  
6 final decision is up to the Commissioner or the Department  
7 of Indian and Northern Affairs. At the second session  
8 of Council, we talked of political development where the  
9 Council would have authority over the whole north. I  
10 spoke against this as it made no difference to the  
11 people who controlled it. It still would not give  
12 them any right to decide for themselves. The power would  
13 be only to the Council to decide the future of the north  
14 and people would be forced to follow whether they  
15 agreed or not.

16 I believe it was a plan to keep  
17 the people oppressed. We would get a land claim but  
18 live under the laws of someone who has no concern for  
19 us or our wishes or our own laws. In January of this  
20 year, we went through the budget for the Territorial  
21 Government. This budget was prepared by the Territorial  
22 Government and approved in Ottawa. You could not change  
23 any money from program to another. All we could do was  
24 take it or leave it. We approved everything.

25 At this time, two motions  
26 were made regarding the pipeline. The first was the  
27 Pipeline Authority. That the Council should have input  
28 into this body. I argued at this time that the people  
29 concerned should have the control if there was to any be  
30 authority since they would be affected the most.



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1 This was brushed aside with a remark that no group should  
2 control the pipeline.  
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4 So if the concern was not for  
5 the people of the north, I don't know what it was.  
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Second was the Council support of building of the pipeline down the Mackenzie Valley. Here was a real example of oppression, since the people had already stated their position about this project, the council was not speaking for them. What they wanted to do was put down a stand against the pipeline. I don't know what the people from the Eastern Arctic were thinking of when they voted in support, as they have no idea what is happening here. I would think as native people they would share the same concerns for people that we do. What I said was that if they wanted a pipeline, they could approve it on their own land, but not to force it on us. But hopefully they did not understand the whole issue and what it means to us.

At this time there were remarks made about this Inquiry that would make it look foolish, but I believe this is the first chance that people have had to really speak their minds. Apparently the Council does not want that, they don't want anyone speaking for themselves. They want to decide everything.

Sometimes I say that if the Commissioner and top executives were all trappers and hunters, things would be different. But I see it would make no difference, as it is the system under which it runs, where only a few people decide for the rest of the population, it oppresses people.

Some people might think of the land claims as a racial issue but it really is an



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1 issue between the ruled and the rulers, between the  
2 oppressed and the oppressors. Under Dene law there is  
3 freedom and equality. The system from the south is  
4 oppression and exploitation, where a few have a lot and  
5 a lot of people have very little. Where the Dene  
6 work together in time of need, the southern way is to  
7 exploit that need. Where the Dene share, only profit  
8 moves people in the southern system. Where the Dene  
9 law gives freedom for the individual to do what he  
10 decides and take responsibility for his action, the  
11 system from the south passes an ordinance which  
12 forces a person's action and takes away responsibility.  
13 Where our system is set up to serve the people, the  
14 people from the south serve their system.

15 The Dene Declaration clearly  
16 states that we are a nation of people with our own ways  
17 of governing ourselves, we have our own values and  
18 lifestyle, and the land claims is our fight to survive  
19 as a nation and to decide our own future. Thank you.

20 Q Mr. Kurszewski, I believe  
21 you're next.

22 WITNESS KURSZEWSKI: The  
23 land claims that the Dene of the Northwest Territories  
24 are making is not just a claim for recognition of Dene  
25 aboriginal title to the land, but also a claim for  
26 recognition of political rights that are now being  
27 ignored by the Federal and Territorial Governments.  
28 To illustrate the political genocide that is happening  
29 in the north today, and to give you a better idea of  
30 what we mean by the phrase, "imposed political structures"



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versus the Dene community structure, we're going to use Fort Smith as an example. Fort Smith is a community that we're familiar with and a community where we have tried to work within the system. We want to describe the experience we've had and the conclusions which the experience leads us to, in relation to the imposed political structure and the Dene community structure.

Fort Smith is a community, the southernmost community in the Northwest Territories, situated about half a mile above the Alberta border. It's made up of approximately 2,800 people. Approximately 1,600 of them are Dene and 1,200 are white people. This gives us approximately a 60% native majority. The governing body that has been set up in Fort Smith to make local decisions was created not by the people of Fort Smith but by the Territorial Government, through its municipal ordinance. It has been designed particularly for the population of Fort Smith that have moved from Southern Canada to Fort Smith. It's designed in a way that these people from Southern Canada can get into the Municipal Council and take part in it much more readily than the native population can. As we see the Municipal Council, the political structure that is set up, it pretends to represent the community but literally does not represent the community. It's made along the lines of southern thinking. This type of political structure, would fit well into a southern community where people give the power to decide what happens to their community to eight or nine people. This is what the people from



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1 the south are familiar with, so the minority of the  
2 population is familiar with this type of structure.  
3 However, the majority of the population is not familiar  
4 with this type of structure and does not agree on the  
5 whole concept that the structure is based on.

6 The native majority do not  
7 believe that eight or nine people should decide the  
8 future of the community. They believe that the future  
9 of the community should be decided by the community,  
10 by the long-term residents who are the native people,  
11 and the white people who have decided that they want  
12 to make Fort Smith their home, and have an interest in  
13 the community other than monetary.

14 We would like to outline some  
15 experiences we've had with the present political struc-  
16 ture. The best example we can give is an example of  
17 the Municipal Council elections that were held last  
18 December 8th in Fort Smith, when the native people  
19 tried to become part of the governmental system there.  
20 The council is made<sup>up</sup>/of eight councillors and one mayor.  
21 Four of these positions were open on December 8th.  
22 Six native people ran for these positions and five  
23 white people ran. There were 11 contenders for the  
24 four councillor positions, and when the outcome of the  
25 elections were reached, three white people were elected  
26 to the council and one native person. Even though the  
27 native people of Fort Smith make up a 60% majority of  
28 the population, they did not come out to vote, there  
29 were a lot of problems in the election because a lot  
30 of native people couldn't understand the procedure that



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1 was being carried out, a lot of the native population  
2 did not show up at the polling station because it is not  
3 their way of deciding the future of their community.  
4 Native people do not go to the polls once a year to  
5 elect someone to decide their own future. The way the  
6 Dene of Fort Smith would much rather decide things is  
7 through a structure that is set up by the people  
8 themselves and that will meet their interests, the  
9 interests of the long-term residents, the interests of  
10 the majority instead of the interests of the minority  
11 and transient population. The outcome of the December  
12 8th election where one native person got on was a real  
13 discouragement to the native people of Fort Smith who  
14 wanted to try to participate within the present political  
15 structure. They saw that there was little hope that they  
16 could take an effective part in it, even though natives  
17 are a 60% majority in the community.

18 They could not get the proper  
19 representation on the Municipal Council because it is  
20 a foreign system. Municipal Council is not the way  
21 in which the native community of Fort Smith wish to  
22 have the future of the community decided. It is not the  
23 political structure within which they would like to  
24 decide their own future. The situation in Fort Smith  
25 shows why the Indian Brotherhood of the Northwest  
26 Territories and the Metis Association of the Northwest  
27 Territories have said, "No major developments before  
28 land settlement."

29 In Fort Smith you can see why  
30 this position has been taken. The people who are making



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In Chief

1 decisions about development are not the people who  
2 should be deciding these things. The core of the  
3 community is not involved in the decision-making  
4 process there. The majority is not involved in deciding  
5 what goes on. The different projects that are proposed  
6 for around Fort Smith and that area are being looked at  
7 by eight or nine people and a decision should not be  
8 made by these people. That's why we're saying that  
9 there should be no major development before land  
10 settlement. Our rights to decide our own future through  
11 our own political institution must be recognized first  
12 so that we will be able to take an effective part in  
13 the future of the north and be able to survive as a  
14 people.

15 I'd like to elaborate a bit on  
16 what we've presented here, emphasizing that the land  
17 claim is not just a claim for aboriginal title, it is  
18 a political claim. We feel we must have political  
19 security in order to survive, in order to take an  
20 effective part in deciding the future of the north.

21 The present political structure  
22 that exists there has been recognized as a structure that  
23 should decide what happens in the area, and the people  
24 who are on it, <sup>have taken</sup> positions about development of the  
25 area that I think are contrary to the way the native  
26 people of Fort Smith would like to see things happen.  
27 I am referring especially to instances like the Northern  
28 Roads Commission when it came around to the communities  
29 to find out what it was the people thought about in a  
30 way of proposed road systems and so on, and the Town



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Council at that time came out with a brief and presented it to the Northern Roads Commission stating that the people of Fort Smith wanted a road to Fort McMurray, and wanted a dam on the Slave River, and this was presented by the Town Council which said that it represented the people of Fort Smith.

What we are saying is that when decisions of this nature or projects of this nature are proposed, that it should not be a council or a system that is foreign to the people that makes the decision about whether or not projects like this should go ahead or not. We feel that when projects are proposed that affect the future of our community, that affect the future of ourselves as a people, that we should be involved in this.

(QUALIFICATIONS & EVIDENCE OF G. KURSZEWSKI  
AND G. CHEEZIE MARKED EXHIBIT 572)



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In Chief

And when the Town Council presented its brief to the Northern Roads Commission we had not been consulted. There was no public meeting. There was no effort at all on behalf of the local government system there to find out whether the people of Fort Smith really believed and wanted to have a road coming in from the south and a dam on the Slave River. There was no effort to do this.

And these are the type of decisions that we see being made every day that are affecting our lives and planning our own future. And we feel that this shouldn't go on any further, that before any type of development goes ahead like the road to McMurray and dam on the Slave River that the people should be guaranteed their political security to decide what happens to themselves, instead of the authority to decide these things lying in the hands of a few people and a foreign system.

The evidence that we presented here has a small bit of an error in it -- well, it's not exactly an error. There's a name change that has just gone <sup>on</sup> recently with the Metis population in Smith. It has here Fort Smith Local and Metis ~ Association of the Northwest Territories. Well, the Metis people have changed the structure of their organization and have called their organization, to begin with, the Fitz-Smith Metis Community, to include all the people who live around the area, and has also expanded their organization to include every family that lives



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1 in the area, that representation on our organization will  
2 be based on family units. That all families will be  
3 involved in our structure that the council that is  
4 made up will be made up of all the families represented  
5 or to be represented on it and this is how we wish to  
6 decide things about our own future and our own organization  
7 is through a structure or a system that the people  
8 themselves have formed, the people themselves -- a  
9 structure that people believe in; something that is  
10 based on the way they feel about how decisions should  
11 be made. I think this is an example of the way in  
12 which native people would like to decide things that  
13 happen to them and that is involving everyone concerned.

14  
15 I think this has been the  
16 history of native people that no one should decide the  
17 future of any other person. That everyone should be  
18 involved in deciding what happens in a community and a  
19 few people should not decide for the rest.

20 This is what the native  
21 people in Fort Smith are attempting to put across to the  
22 rest of the population and I think that this is what we  
23 have emphasized most or <sup>are</sup> emphasizing most in our land  
24 claim is that we must be guaranteed the political  
25 security that is rightfully ours to decide our own  
26 future through our own political institutions, not through  
27 a foreign system of any kind but through institutions that  
28 the people themselves develop to meet their own needs.  
29 And this is what we emphasize is that no development take  
30 place until this right of native people is recognized  
by the Federal Government. And this is what we're after.



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1 We want the Federal Government to recognize that the  
2 native people have a right to decide their own future,  
3 and also have a right to decide their own future through  
4 their own political institutions, not through a foreign  
5 system. So I would just like to emphasize that as  
6 the major point that I'm trying to make in this  
7 presentation and I think my -- the Chief of the Fitz-  
8 Smith Indian Band would, might want to elaborate some  
9 more on this.

10 WITNESS CHEEZIE: Yes, I agree  
11 with the presentation that we gave here today. The kind  
12 of ideas that it is talking about was gathered from  
13 studies and talks we had with -- and meetings we had with  
14 our people in Smith.

15 The biggest thing which  
16 I would like to talk about right now would be the  
17 big gap between how territorial local government sees  
18 their kind of government suitable for the people and  
19 how we see our own government as being suitable for our  
20 needs, and trying to show the gap that lies between these  
21 two things. Just by an example of the election that we  
22 had in Fort Smith. Like I was presenting in the evidence,  
23 it shows clearly that we have a large majority of native  
24 people in Fort Smith. And that large majority of people  
25 approximately 60% have hardly any or not at all, any way  
26 of deciding anything for themselves.

27 The local government  
28 scheme set up through the Municipal Council is such that  
29 everything has to be run through their council before  
30 it is recognized.



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The large number of Dene people there have no say in this government at all. In the election that we ran last December, we tried to participate in this system. We ran candidates for the four council positions plus the mayor's position and we failed.

There's a lot of reasons why we failed. The biggest one of all is the people don't understand this kind of system. You are talking to hunters and trappers, people living from the land and a lot of people say they don't have no system of government, they don't know what they are doing.

Well, I disagree and 60% of the people in Smith disagree because there is no way that they are being given any kind of a fair responsibility to trying to solve some of the problems themselves.

I think if the choice was given to the people now I think we would go ahead and operate under a system which we ourselves would develop, not something that is imposed on us by a Territorial Government and by the Federal Government or whoever or the oil companies, whoever is doing it.

I don't believe that any kind of development is going to help this situation at all. And the Mackenzie Valley Pipeline Project, the way I see it, if it has any -- if any of the communities down in the Mackenzie experience the kind of things that happen in Smith since Fort Smith has become a community where people have been staying there for a large part of



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their lives now and are not, have been moved into the community from the bush away from their hunting and trapping lifestyle.

I don't see any hope for those people. There is no way that you can tell an old trapper, an old man, that he doesn't have a system of his own which he can't voice his concerns because he can't write up a piece of paper like this and consequently give it in his native language to the mayor or the council and try to bring across his point of view of his concerns.

There is no way that can happen. I think the only<sup>way</sup> that the people can survive here is that if they be given the time to develop their own kind of systems which they can operate under which would give respect to their kind of culture they have, lifestyle and the environment and the land that the Dene people are trying to recover from the government.

One of the things which I would like to talk about right now is the kind of things that we had experiences with in Fort Smith and to be more specific, the election. We had run six candidates in that election for the four seats and we had difficulty running this kind of a scheme because a lot of people didn't understand like they had to vote four times on one slate and they just -- at some of the ballots, there was only "X" on where there was supposed to have been four. And we had gone through a lesson, I guess you could call it, with these people telling them, this is how to vote; telling, explaining to them clearly that he had 4 votes. But a lot of them people took only one so we lost



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1 a lot of votes like that. And that just goes to show  
2 to me that this kind of system doesn't work for the  
3 people up here and it won't ever work, I don't think, if  
4 we don't sit down now and try to change it.

5 Because these people have  
6 concerns that are 60% of the population in that town  
7 and they have no control over anything. If they wanted  
8 to build houses somewhere, they couldn't build houses  
9 because there's municipal bylaws which are passed. They  
10 say you can't put up a structure unless it is a certain --  
11 meets certain criteria. And those are all tied and  
12 interrelated and then they come to me. Well, a lot of  
13 people in the Band come to me and say, "well, can I build  
14 a house here and I say, Go ahead. Build it wherever you  
15 want. It is your land." But they come around later and  
16 say the Town Council says they will take you to Court  
17 if you build a house on that land or if they went through  
18 the Municipal Council route, they have come across a  
19 bylaw which stopped them from building a home here.

20 Those are the kind of  
21 things which I believe don't respect our concerns at  
22 all. They don't make any room in it. Whoever drew them  
23 up, I don't think were concerned about it.

24 I guess it all comes down  
25 to the point of this. That the land claims is the only  
26 thing that can ensure the survival of our people.



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1 It has to be a political  
2 settlement. They have to recognize our rights to  
3 develop our own institutions not something that's  
4 imposed.

5 I don't know if we're repeating  
6 ourselves a lot of times here, but the thing I'd like  
7 to make quite clear to you I think is that there's no  
8 way that the people up here can survive if the Federal  
9 Government or the oil companies go ahead and build that  
10 pipeline without giving the Dene people in the  
11 Territories the right to decide for themselves, the  
12 things concerning their lives.

13 The way I see things, it'll  
14 destroy them. Looking at the case in Smith, that  
15 community has been there approximately 100 years or  
16 it's going on it's second hundred years and over those  
17 hundred years, I don't<sup>think</sup> the governmental system gave  
18 any room for the people out over there at the start  
19 to develop in any way at all.

20 These people that we -- I  
21 grew up in Fort Smith and even my parents I try to<sup>get</sup> them  
22 out to go and vote and my parents I sat down with her  
23 and told her you got four votes. Make sure, you know,  
24 you vote for the people that would represent our  
25 concerns and she only voted once and that probably  
26 happened a hundred times, even more. I don't know,  
27 because we had meetings with people trying to explain  
28 to them how this is the only that we can voice our  
29 opinions by trying to go through the system so we  
30 figured we had a good chance because we had 60% of the



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population but we figured out that numbers alone don't make any advantage. Theoretically, it could have worked. It works beautifully theoretically, but when we're talking about something that these people don't know anything about. It don't make no sense to them.

The other point in our presentation I'd like to make it clear too, is that the government system I think the Town Council system doesn't leave any room for us to participate in it, because they undermine my authority as Chief of my band there steadily.

Like, what they're telling me in effect is that I have no say at all in that community whereas some place might be like in Good Hope where the Band Council in that town and the many in people in town, they supposedly run things. In Smith, it's the other way around, but we have the majority and trying to explain this to people<sup>that</sup> don't know anything about these kind of things. You know, it don't make no sense to them at all.

I think that's why the only way can ensure our survival as people is that the government understand what we mean by political control. That we need to have time to develop own system by which we can operate under as equals. We're not asking for special status. We're just asking for what's rightfully ours, that nobody ever bothered to discuss with us. We're undergoing a change up here and it's happening very quickly. You're coming to the end of your Inquiry here and who knows how long till your, Commissioner or whatever,



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your recommendations come out.

We're trying to work under all these pressure of trying to prepare people. Trying to make them understand that if we don't do something now, if the government doesn't pay a heed to our question that all these things we're talking about is meaningless that we're going to be wiped out anyway. The kind of things that we want to see as important to our survival is being totally disregarded by going ahead and building the pipeline. I don't see any way at all that the pipeline can help towards the betterment of the natives in the Territories. If anything at all, it's going to destroy them.

It just goes to show like the situation in Smith which has been there for a hundred years, that the situation of the native people there has deteriorated all within that time and there has been no -- in my experience there has been no, I don't think any respect given to the people that were living there to the kind of things that they were concerned about; their hunting and trapping rights, the places where they could live. All those aspects that <sup>come</sup> under all the land claims sound like we were talking about.

If the government don't realize our concerns of these, they can wipe us out. That's why it is really important that you look at that question that the land claims are not just land claims for a few rights to hunt in a certain area. Not around the pipeline or you know something to that effect. Who knows?



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1 But we want to make it quite clear that we want to  
2 see<sup>a</sup> land claims settlement before the pipeline goes  
3 ahead because there's no way that we can participate in  
4 it as equal partners if that don't happen. We see  
5 certain dangers in it. There's all kinds of dangers  
6 which we see ourselves going through, experiments --  
7 experiencing right now; to date, you know with the  
8 election.

9  
10 I myself find it very hard to  
11 operate under the government system which doesn't give  
12 me any authority to do anything at all, because they say  
13 like the Fort Smith Town Council has the power in Fort  
14 Smith and here I am the Chief and George, myself, we're  
15 representing 60 percent of the population and we don't  
16 have no say over anything. If the northern roads fact-  
17 finding tour came to Smith and the people said "We want  
18 a road" and everybody says it's for our own benefit.  
19 Like, the price of food is going to<sup>go</sup> down. You're going  
20 to be able to buy food a lot cheaper. Like, it's going  
21 to bring all kinds of benefits with it.

22  
23 But those are side issues which  
24 we're not concerned about. We're concerned about who's  
25 making that decision to say build that road. Because  
26 60 percent of us don't agree with that, because that in  
27 itself just proves to us that this kind of system  
28 doesn't operate, you know, respecting our concerns.

29  
30 The other thing is about the  
31 dam. They see that as one of the biggest -- one of  
32 the major development -- biggest, largest development  
33 in that area and the town fully endorses this thing.



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1 It says that the town is 100 percent behind it. We  
2 realize there's benefits coming along with it but we're  
3 not talking about those. We're talking about the question,  
4 who has the control there. We certainly don't have it.

5  
6 You know, and for the Town  
7 Council which is made up of nine people to represent the  
8 whole town is stupid because these people come time and  
9 time again to me, especially people in my band, Indian  
10 people, they come to me and ask me for explanations of  
11 why certain things are happening in the community, and  
12 I try to explain to them that the Town Council is the  
13 only body in that town which is recognized by the  
14 Territorial Government and by the Federal Government or  
15 other large corporations that want deal within that  
16 town.

17 Like, if an oil company came  
18 into town, they certainly wouldn't deal with us. They  
19 deal with the town because that's a legitimate government  
20 body in that town and they totally disregard 60 percent  
21 of the people living there by doing that. If a big  
22 project like this go ahead, there's no way that we can  
23 participate in it as equals or any other ways and we're  
24 going to be losing further and further.

25 We talked about this. We named  
26 this paper, political genocide, imposed political  
27 structures for us to Dene community structures. I think  
28 George brought it out quite clearly that the only <sup>way</sup> these  
29 people can survive, the only way these people can protect  
30 themselves against development that is not for their  
31 benefit is by developing a system of our own which we can



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bring out our concerns and be strong enough to stand beside them and not having to let a few people decide for a large number of people, and that's what your central question is. That is, why should eight people have a -- the right to decide over a large population like in Smith?

A lot of these people used to live on the land and one of the questions they're having to deal with now since moving in the communities is how we participate in the government system. How do we participate in the Town Council? How do we bring our concerns known? One of the problems is the language barrier. To go back to the election, we -- everything was in English and the language predominately in Smith right now is Chipewyan, French and probably English, and a large population of Cree. The dominant language which the whole election was held through, was English, and 60 percent of the town can't converse that well in English.

Even myself, I'm a high school graduate. I still can't talk the language. I find it hard understanding different meanings to different words because it has one meaning in a different context and take it out of that one, it has a totally different meaning, and when we're talking or we're trying to explain something like a municipal ordinance to people like this, how do you explain those differences? In our language, there's no distinction like that.

That just goes to show -- shows me that there's no consideration made <sup>by</sup> the people who



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1 institute this system on us. They give us no right  
2 at all to decide anything for ourselves.

3 I think I'll end with that.

4 Thank you.

5 THE COMMISSIONER: Thank you  
6 Chief.

7 MR. BELL: Mr. Bean?  
8  
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WITNESS BEAN: Two opposing forces are presently at work in the north. On the one hand, powerful corporate and governmental interests want to build a gas pipeline down the Mackenzie Valley through Indian land. At least one of the applicants, Arctic Gas, asserts that among other things this pipeline will have favorable effects in the political development of the north; specifically, that it will support a process of decolonization. On the other hand the Dene say that there should be no pipeline before a land settlement. They assert that they presently live in a colonial situation, a proposition with which Arctic Gas may agree. But they then proceed to assert that their landclaim must mean the right to decide what happens on their land, meaning obviously the decision with respect to the pipeline. To build the pipeline without their consent would not only immediately damage their claim, it would also mean the conservation, indeed further growth of the existing colonial political system. Therefore the pipeline prior to a land settlement would further colonize the Dene.

I intend, by focussing primarily on the phenomenon of the creation and growth of local government structures within northern communities, to demonstrate that the Territorial administration has been and continues to be a colonial institution.

When I came north in 1968 the movement from traditional hunting camps to centralized settlements was just being completed in the



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1 Central Arctic. In the brief orientation session which  
2 the previous area administrator of Cambridge Bay had  
3 with me, he related his success at finally convincing  
4 the Perry Island people to move into Cambridge Bay.

5 Q This is --

6 A Yes, and you've got the  
7 summary perhaps.

8 Q O.K., now I've got it.

9 A O.K., the date is unfor-  
10 tunately March '76.

11 It was because this previous  
12 area administrator had taken the trouble to travel to  
13 Perry River by dog team that he had been able to con-  
14 vince the family to relocate to Cambridge Bay. He had  
15 also made it clear that only in Cambridge Bay would  
16 government housing and rations be available. There  
17 too, the family could be together with the children  
18 who were in grade school. As my predecessor saw it,  
19 it was his success at convincing the last remaining  
20 family group to move to the settlement that was  
21 primarily responsible for his promotion to a new  
22 position in the Regional Office. In retrospect, the  
23 move from camps to centralized settlements had great  
24 significance to the native peoples, not the least of  
25 which was the establishment of the dominance of the  
26 government and the reciprocal dependency of native  
27 peoples.

28 The previous area administrator  
29 also briefed me on the Advisory Council. There was a  
30 need to co-ordinate activities within the settlement



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and the Advisory Council meetings were useful to keep everyone informed of each other's activities. As I found out later, membership on the Cambridge Bay Advisory Council was typical of most other settlements. There were representatives from each federal agency in the community -- the R.C.M.P. corporal, the N.C.P.C. manager, the head nurse, the M.O.T. airport manager, the school principal, representatives from each church, the Bay manager, the private business enterprises, and the area administrator.

Discussion centred around mutual administrative concerns -- the nurse asking the R.C.M.P. to shoot some loose dogs; the Bay manager asking the administrator to guarantee an advance for someone to go hunting; the local entrepreneur asking the N.C.P.C. manager if there would be money for a contract to build an addition to the Power House. Subject to regional approval, this group would decide on general concerns of a municipal nature -- where new houses and government installations would be placed, which roads needed upgrading, where street lighting should be installed. Usual topics of general conversation were the problems of Eskimo drinking and social life or else the lack of ability of the regional officers to understand the reality of community life.

THE COMMISSIONER: Sorry, the regional officers say in Inuvik, Frobisher, etc.?

A Yes, at that time it was Fort Smith, yes, or Cambridge Bay.

Q Fort Smith was the



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regional office for Cambridge Bay.

A As it still is.

Q I shouldn't have asked  
the question.

A The Advisory Council was  
thus a small clique of the traditional colonial powers  
in the community. All members saw themselves primarily  
responsible to agencies and interests outside of the  
community. When the Territorial Government began its  
local government program in 1968-69, the common per-  
ception, both within communities and in the governm ent  
was that Advisory Councils would now be elected. The  
elected council was still to be advisory to the area  
administrator, later settlement manager, until it  
became a hamlet. The elected council would deal with  
the muni cipal services of the settlement, specifically  
water delivery, sewage and garbage pickup, roads and  
air strips, fire protection, and a continuation of the  
Community Development Fund now called the Per Capita  
Grant.

Another major influence on the  
Settlement Council program was the previously introduced  
low cost housing program. First introduced to the Eastern  
Arctic in 1964, the Housing Association program was  
seen as a successful first step towards self-government.

In conversation with the  
regional director of the Fort Smith region in 1968-69  
the introduction of local government Settlement Council  
program was described as an evolution of the Housing  
Association program to include local involvement in



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municipal services in the community. Because of its importance, I will outline the major aspects of the Housing Association program:

1. The structure, responsibility, eligibility, and method of elections were strictly predefined.
2. Housing Associations were granted basically three areas of responsibility: Responsibility to collect rent, responsibility to assign tenants, and responsibility to provide maintenance. Each of these areas had strict guidelines.
3. Housing Associations have no say in the design of homes or in the number of homes assigned to a community. They have no power to modify or reform the system under which they operate.

Consequently, one of the effects of this program has been to reinforce a setting where a government official, usually white, is the "expert" on how the community is to deal with its housing problems. The experience and understanding of community residents is inadequate as a basis for judgment because the rules and procedures are alien to the background of the residents. To operate successfully on a Housing Association one must look not to his own cultural background but must adapt to a set of externally imposed rules and procedures. The program then makes local residents dependent on government officials for expertise.

The development of the local government model. Although the Territorial Government presented Municipal Councils as an opportunity for communities to run their own affairs, it is interesting



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1 to examine some of the specifics by which this local  
2 autonomy was to evolve. The structure of the council  
3 was completely predetermined prior to its introduction  
4 into the communities.

5 It was the bureaucrats of the  
6 Territorial administration, ultimately responsible to  
7 Ottawa, who designed the structures and delineated the  
8 powers of local councils. A passage from an article  
9 by Dave Flynn, one of the civil servants responsible for  
10 these decisions, is particularly revealing on this point:

11 "The new Department of Local Government in 1967  
12 decided to continue the system of democratic  
13 government already started in the north. This  
14 was done partly for continuity. The large centres  
15 already were incorporated as municipalities; a  
16 few others were on their way toward control of  
17 their own affairs.

18 In addition, we the territorial staff in charge  
19 of local government, had to remember the overall  
20 purpose of the Department of Local Government,  
21 to prepare for additional responsibility at the  
22 territorial level. We had to satisfy Ottawa  
23 that government at the local level was legitimate.  
24 This meant it had to be representative and  
25 responsible, two key principles of democratic  
26 government."

27 There is an additional  
28 sentence that I quoted in my study that I'll quote now  
29 from the same passage:

30 "We believe that we can design a democratic



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1 system of government which would suit all  
2 communities."

3 Mr. Flynn's comments accurately reflect the essential  
4 colonialism underlying the efforts of the Territorial  
5 administration's approach to political development.

6 First, Mr. Flynn clearly  
7 shows that the overall purpose of the program was not  
8 the development of community level political autonomy per  
9 se, but rather the satisfaction of conditions set by  
10 Ottawa which would lead to an increased transfer of  
11 responsibilities to the Territorial administration.  
12 Local government in the communities was simply the  
13 means by which the Territorial administration could  
14 justify gaining increased administrative responsibilities  
15 from Ottawa.

16 The second telling indication  
17 of colonialism is Mr. Flynn's assumed right to design  
18 a system of government for the Dene and Inuit. Mr.  
19 Flynn implies that the only system of local government  
20 in the north worth examining was that of the  
21 incorporated municipalities (in 1967, Fort Smith,  
22 Inuvik, Hay River and Yellowknife). The idea that either  
23 the Dene or the Inuit might already have a system of  
24 government appears to be ignored. There are specific  
25 reasons for this which I will discuss later. To my  
26 knowledge, it was never considered that the peoples being  
27 governed might wish to have some say in the design of  
28 their own government. The Territorial administration  
29 apparently saw no contradiction in talking of people  
30 governing their own affairs while at the same time



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imposing a completely predetermined and alien government structure for such decision-making.

Later in his article Mr. Flynn disallows the possibility of the evolution of traditional Dene forms of government:

"At first we were told that in Indian communities the traditional Chief represented the community. In the first place, we argued, the Chiefs were not usually traditional. They were chosen originally by the Department of Indian Affairs as a representative for certain purposes of the Federal Government, ranging from the signing of treaties to greeting V.I.P.s. Secondly, the Chiefs were apparently no longer representatives of the Indian community, judging by the number of delegations opposing the Chief's policies. Finally, Chiefs were in no way representative of non-Indian residents of the communities."

Clearly the Territorial administration was not prepared to consider Chiefs and Band Councils as a form of local government for its purposes. Instead, the Department of Local Government took it upon itself to design in specific detail the form and structure which local government would take.

A complex suggested Constitution was drawn up for the approval of Settlement Councils, and I refer you to Appendix A of my study for this document, if you're interested. A Training Manual was also designed for instruction in the use of this new form of decision-making.



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I would like to quote  
from this manual on how to deal with the members of  
the communities who might attend meetings and wish to  
get involved in the decision-making.

"Section 8-1 -- When members of the community  
or other visitors attend council meetings.  
Although the public has a right to attend  
council meetings, the public has no special  
right to take part in council discussions, but  
the council, through the Chairman, may, if it  
wishes, ask or invite any member of the  
public or special visitor to join the discussion.  
The Chairman must make sure that the visitors  
remarks are to the point and as brief as  
possible. When the discussion has ended and  
before the vote is taken, the chairman should  
thank the visitor who then withdraws from the  
proceedings to the back of the room away from  
the council table.

If any member of the public interrupts or  
disturbs the council meeting in any way, he may  
be asked to leave and if he will not do so, the  
assistance of a police officer may be obtained  
in removing the offender. In the event of a  
great deal of disturbance, after repeated calls  
for order by the Chairman, the Chairman  
should adjourn the meeting stating his reason  
for doing so and naming the date, time and  
place for the next meeting."



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THE COMMISSIONER: That's what is known as a worst case situation. You are going to be a while longer. I think we'll just take another five minute break if you don't mind and we'll stretch our legs for a moment.

(PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Carry on, Mr. Bean.

WITNESS BEAN: Discussion on the local government model: The model chosen by the Territorial Administration was then effectively a Southern Municipal model. The process and content of such a structure contradicts the more traditional decision-making patterns of the Dene. Instead of a consensus method, a parliamentary procedure of majority rule was chosen. Instead of community involvement participation was actively discouraged in favour of a strict principle of representative leadership.

Early in the introduction of these councils, development officers encouraged the use of native languages on the council. It appears significant that such a move had to be encouraged by the development officers and was by no means spontaneous. However, in settlements with which I am familiar, the use of the local language was abandoned. The reasons given by the local people were that there are no words for council rules; if you are going to speak in a native language, then you are going to have to use native rules.



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1  
2 The overall nature of  
3 the settlement council can be seen to be based in a  
4 southern culture. It is bound to a culture which has  
5 an elitist decision-making pattern and does not expect  
6 or encourage broad involvement of its citizenry. It  
7 assumes the need for quick, business-like decisions  
8 without allowing time for reaching consensus. The area  
9 of responsibilities of the council is based on an  
10 assumption of an evolving tax base suited to a culture  
11 which has an ethic of private property and ownership.  
12 The council, in effect, becomes the forum for working  
13 out the interests arising out of the ownership of private  
14 property. The range of responsibilities delegated to  
15 the council -- roads, airstrips, streetlights, water,  
16 sewage, and garbage are prime topics of community  
17 discussion only in a private propertied tax-based  
18 culture. When each person owns his own property or  
19 business, then these are the matters which the individual  
20 interests must collectively work out. However, in cultures  
21 not based on an ethic of private ownership, such topics  
22 are incidental to other collective problems.

23  
24 With the Dene, some of the  
25 more central collective issues might be organizing  
26 community hunts, deterioration of trapping lands, education,  
27 and care of the elders. Yet, councils have been told  
28 that such matters are not their responsibility; rather,  
29 they are the responsibility of various government agencies  
30 involved.

31  
32 Another rather curious  
feature of the settlement council model is the concept of



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responsibility envisaged by the Territorial Administration.  
In his article, Mr. Flynn outlines the responsibility  
of the Settlement Councils:

"The second democratic principle we insisted  
was that of responsibility. This meant  
responsibility to those who elected the  
Council and to those who provided the funds  
for operating the community. In the south  
the people who elect a Council also pay  
taxes for that Council's budget and,  
therefore, the Council's prime responsibility  
is to the electorate. In most northern  
communities, on the other hand, little money  
is available for local budgets so that as  
a result Councils have a dual responsibility:  
to the local residents whom they represent and  
to the senior government which supplies their  
operating budget."

In my experience  
responsibility was generally defined as indicated in Mr.  
Flynn's article. The prime responsibility of the Council  
was to whomever provided the funds. When communities  
became tax-based, their prime responsibility would then  
be to the tax-payers. Until that time, their prime  
responsibility was to the Northwest Territories Adminis-  
tration.

It follows that the  
Territorial Administration viewed settlement councils  
as local administrative units. They were not viewed



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1 as political bodies in the sense that they would be bodies  
2 whose function was to represent the views, values and  
3 interests of the electorate they represented. Rather,  
4 their function was seen as primarily administrative.

5 Settlement Councils in  
6 the Communities: The Department of Local Government  
7 was given a mandate to undertake the initiation of  
8 Settlement Councils into the communities. An  
9 education process was planned whereby Settlement Managers,  
10 responsible to the Executive, would assist the fledgling  
11 Local Councils in their efforts to gain sophistication.  
12 Once a community turned hamlet, it was considered by  
13 definition to be developed. Municipalities such as  
14 towns, villages, or cities were considered to represent  
15 the ultimate evolution of the Settlement Council model.

16 In 1972, the Commissioner's  
17 Annual Report listed pipeline development ahead of  
18 Settlement Councils as a concern of the Department of  
19 Local Government:

20 "Since 1970 the Territorial Government has been  
21 involved in the planning for a pipeline down  
22 the Mackenzie Valley...In general it has been  
23 agreed that the Territorial Government will  
24 have primary responsibility for those aspects  
25 of pipeline and highway development which  
26 specifically affect the people of the  
27 Territories.

28 Many of the possible benefits and harmful  
29 effects for northern residents concern matters  
30 which must be negotiated with the pipeline



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1 companies. For this reason, the  
2 Territorial Government is a participant  
3 in the detailed negotiations between the  
4 Federal Government and the pipeline companies,  
5 and is providing considerable input on such  
6 matters as employment and training agreements,  
7 pipeline routing and the operation and siting  
8 of construction camps."

9 The next item in the Departmental Report then refers  
10 to Settlement Councils:

11 "Throughout 1972 the Department of Local  
12 Government continued to assist in the  
13 transfer of governmental responsibilities  
14 to settlements. The success of this program  
15 is heavily dependent upon the willingness  
16 of communities to accept responsibilities."

17 To suggest that  
18 communities had a questionable willingness to accept  
19 responsibility hardly gets to the dynamics created by  
20 the Local Government Program. Certainly, the Settlement  
21 Council phenomenon was greeted with some confusion.  
22 On the one hand, people eagerly acknowledged that they  
23 wished to run their own affairs. There were repeated  
24 comments by community people to the effect that natives  
25 should be allowed to run their own affairs.  
26 The government or whites should not control native  
27 people. Therefore, the Local Government concept was  
28 welcomed.

29 On the other hand, the  
30 emphasis on parliamentary procedure, on sticking to the



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1 issues of garbage, sewage and water confused and frus-  
2 trated people to the point where they wondered what all  
3 this had to do with running their own affairs. Rumors  
4 of major developments were beginning but Councils were  
5 told that these were not their responsibility. The  
6 fact that Councils could not act on decisions until they  
7 received Government approval made it even more unclear  
8 as to what the Government meant by "running one's own  
9 affairs."

10  
11 From my experience, I  
12 think now that almost without exception, Councils were  
13 perceived as foreign institutions whose purpose was in  
14 the main, to serve interests outside the native community.  
15 I can recall various discussions in different communities  
16 where native people often Councillors, would maintain  
17 that their particular Settlement or Hamlet Council was  
18 part of the Territorial Government, not part of the  
19 community. I would counterargue that the Council was  
20 part of the community and that the community could use  
21 the Council to express their own ideas and interests.  
22 The sense of alienation was pervasive, however.

23 Hugh Brody in his recent  
24 book "The People's Land" describes the contradictions  
25 inherent in the position of the administrator, indeed  
26 the whole government, vis-a-vis the local native  
27 population in Eskimo communities during this initial phase.

28 "The administrators thus find themselves in  
29 a curious position. On the one hand, they urge  
30 the Eskimo community to believe that every effort  
is being made to give them responsibility for



There was a hopeful belief

Following from the

However, it did not take

long before it was recognized that such collective activity was particularly problematic for the



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Administration. Such gatherings were politely tolerated at first. Soon a policy emerged that the Commissioner would have to approve all details, including agenda and delegates, prior to the event. The name of the responsible Local Government official also had to be included. Generally such plans were perfunctorily approved. However, when Fort Good Hope, Fort Franklin, Fort Norman, Fort Wrigley, and Norman Wells decided to hold a Regional Conference in Fort Norman in the fall of 1973, approval was not so automatic. Fort Wrigley had taken a strong stand against the construction of the Mackenzie Highway and the Administration feared that such an attitude might spread.

Fort Norman, the organizing community, was therefore told that it would be inconvenient to hold a Regional Council Conference at that time. It was implied that funding was short. However, the Region persisted. The Director of Local Government advised me that the Minister had indicated that there was to be no regional gathering, especially not one involving Fort Wrigley. The Councils, it was argued, should have some respect for the government. If the government felt that the present timing for a Regional Conference would be difficult, then Council should realize that it would be in their best interest to wait until they had government approval. The government does not change quickly and Councils must learn to be realistic about what they can expect from the government, it was stated.



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1                   The Local Government position  
2 vis-a-vis Band Councils also remains the same. Although  
3 in Arctic Red River the communities decided to evolve  
4 the Band Council structure to include the municipal  
5 function of a Settlement Council, the Director of Local  
6 Government indicated that he would permit such a body  
7 as long as it was viewed as a pre-settlement council  
8 which would be encourage to adopt normal settlement  
9 council structure and procedure as soon as possible.

10                   It is now my opinion that  
11 despite official declaration to the contrary and despite  
12 the individual beliefs of various local government  
13 officers, the Territorial Administration as a whole  
14 has had no serious intent of allowing either communities  
15 or native peoples any significant degree of autonomy  
16 or any real chance to run their own affairs. One may  
17 well ask why the Territorial Administration bothered  
18 with the Local Government Program at all if it did not  
19 intend to allow people greater political autonomy. Why  
20 did it put so much effort in establishing local councils?  
21 The answer is quite simple. It was very much in the  
22 interests of the Territorial Administration to undertake  
23 such a program to maintain and enhance its own position.  
24 More specifically, the major interests of the Territorial  
25 Administration were served in the following ways.

26                   The Territorial Administration  
27 wished to get a greater degree of administrative control  
28 from Ottawa. Ottawa set a condition  
29 to such a transfer, the condition being that the  
30 Territorial Administration had to develop a greater



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1 appearance of being a legitimate, democratic government  
2 in the north. This appearance could be created through  
3 the establishment of a municipal government infrastructure,  
4 Ottawa stated.

5  
6 There was one important limita-  
7 tion on this municipal infrastructure however, if the  
8 Territorial Administration wished to gain control from  
9 Ottawa. Chiefs and Band Councils through the treaties,  
10 and the Indian Act were a direct federal responsibility.  
11 to acknowledge the Chiefs and Band Councils, as a legiti-  
12 mate form of local government would therefore defeat the  
13 Territorial Administration's purpose.

14 Thus, the Territorial Admininstra-  
15 tion could argue for a greater control over northern  
16 administration if it could develop a municipal infra-  
17 structure controlled through Territorial Ordinances ; that  
18 is, one which excluded Chiefs and Band Councils. The  
19 Territorial Adminstration therefore adopted an ideology  
20 which didn't acknowledge race or cultural difference --  
21 "We're all northerners."

22 When the federal government  
23 began funding native organizations in the Territories,  
24 it is therefore understandable that the Commissioner  
25 was displeased. A letter dated October 8, 1971 from the  
26 Commissioner to the then Minister of Indian Affairs and  
27 Northern Development outlines the Commissioner's view  
28 on the matter and clarifies the interests of his  
29 administration. This letter is the best available  
30 document to indicate the true interests of the  
Territorial Administration and I refer you to Appendix C



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1 of my study for the full text.

2 I would like to quote a  
3 short section from it to give an indication:

4 "The formula. The present departmental approach  
5 as approved by Cabinet and now government policy  
6 is based on one of national interest. In other  
7 words, what is done nationally must be done  
8 regionally. The basic formula developed for Indian  
9 people in the provinces where they are hopelessly  
10 in the minority and only 1 percent of the Canadian  
11 population is being used in the Territories where  
12 the Indian and Eskimo population is in the majority,

13 Just four years ago, and administration was  
14 developed, organized and sent to the north where  
15 they could be closer to the people, equipped with  
16 the authority to make on the spot decisions affecting  
17 this provincial-like responsibilities normally  
18 carried on in the provinces. Here possibly is the  
19 danger and perhaps error. What is done in the  
20 south for Indians in Toronto, Montreal or  
21 Vancouver where they are in the minority and dis-  
22 advantaged perhaps having only one thousandth of  
23 one percent in terms of population in those three  
24 cities is duplicated here."

25 In other words, a formula is  
26 being applied forgetting that the Northwest Territories  
27 Government was established specifically for all the  
28 residents of the Territories and spends one hundred  
29 percent of its funds for this purpose.  
30



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1 As Indian, Eskimo and Metis  
2 people are in the majority, their special interests  
3 are being looked after. Again, where the policy in the  
4 south does not take on a racial connotation. because of  
5 the minority position of the Indian, such as emphasis  
6 in the north becomes racial because of their majority  
7 position.

8  
9 There are several other ways  
10 in which the interests of the Territorial Administration  
11 were served by the Local Government Program. AT the  
12 time of transfer of federal to territorial administration  
13 in the north, there were many federal civil servants  
14 who chose not to become part of the Territorial  
15 Administration. There was, at that time, considerable  
16 talk and wishful thinking that the Territorial Administra-  
17 tion was hopelessly ill-equipped to carry on and that  
18 undoubtedly the Federal Government would have to re-assert  
19 itself within a short while.

20 Thus, the Territorial Administra-  
21 tion needed very quickly to establish credibility within  
22 the north. By including community residents and offering  
23 to let people run their own affairs, the Local Govern-  
24 ment Program initially won the allegiance of many  
25 native northerners for the Territorial Government.

26 The Development vs. administra-  
27 tion struggle. In the January 1974 sitting of Territorial  
28 Council, a motion was passed which asked the Department  
29 of Local Government to involve the communities in  
30 preparing a philosophy paper which would outline the  
philosophy of the Department. The community meetings,



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1 held in Dene settlements produced a consistent response;  
2 the Dene did not view settlement or hamlet councils  
3 as their<sup>own</sup> community institutions. Settlement councils  
4 were seen as imposed belonging to the government.  
5 Repeatedly, Chiefs and Band Councils were seen as the  
6 true community government.

7  
8 The paper also warned of the  
9 situation within the larger municipalities. The  
10 Territorial Administration viewed towns, villages, and  
11 cities as a more highly evolved form of community  
12 government but the point of view of the native people  
13 in such centers was rarely considered. In relation  
14 to the process of establishing municipal government,  
15 the Philosophy Papers states:

16 "In a part of Canada two-thirds populated by  
17 native peoples, a continuation of this process  
18 raises depressing prospects."

19 The philosophy paper suggested  
20 that settlement councils be viewed as a process of  
21 political development rather than as the creation of  
22 administrative structures.

23 "The Department assumes then that as a first  
24 priority, the development of municipal government  
25 must be seen as a means by which the original people  
26 of the Northwest Territories may come to play a  
27 major role in all levels of government. In practice,  
28 this confirms the emphasis on the obligations to  
29 the communities for political and social education  
30 toward a working awareness of their particular  
interests rather than exclusively providing



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administrative institutions as the communities  
move through levels of incorporation."

The philosophy paper was  
never discussed in Council. Once that January 1975  
Council session was over, with the philosophy paper  
never having been discussed, hopes were gone that the  
Local Government Program might be changed. Within the  
Department of Local Government, there had been a growing  
division between the developmental interests which held  
that local government should be primarily the process  
of development of political awareness and the administra-  
tive interests which held that local government should  
be primarily the development of administrative structures.

The fate of the philosophy  
paper essentially ensured that from that point on,  
Local Government was to restrict itself to developing  
local administrative competence in a southern municipal  
structure. Roads, airstrips, water, sewage, garbage,  
town-planning and land became the primary concern of  
the Department. Those involved in the preparation of  
the philosophy paper have since resigned from the  
Territorial Public Service.

A memo, recently published  
in the media, from the Commissioner to the Director  
of Local Government dated December 12, 1975 confirms that  
the struggle within the Department to make Local Govern-  
ment anything other than the imposition of southern  
municipal structures is now over.

The Commissioner states:



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"I intend to insist in the new year that Local Government concentrate on the mechanics of preparing communities for hamlet and village status."

The Commissioner goes on to quote from notes made by Mr. Cotterill regarding the Local Government Program:

"The basic thrust of the Development Division since its inception has been that of creating political awareness at the settlement level in the Northwest Territories. This thrust is no longer valid in that a good level of political awareness has been achieved and the thrust must be changed to look beyond this basic developmental stage.

...The kinds of support now required by settlement and municipal councils is not available from the Department of Local Government and not being provided by them. Support is needed for the post political awareness stage and this type of support is basically technical in nature, not philosophical.

The role of the Development Division, Department of Local Government should be changed from that of developing political awareness to that of providing technical support to settlement and municipal councils in the N.W.T. This technical support would include such areas as finance, personnel, community planning, etc.:"

It is not clear what the term "post-political awareness" means, but in my opinion, it is not in the interest of the Dene to define the present situation as requiring administration rather than political development. As the same time, the notion



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1 that an arm of Territorial Government as a colonialist  
2 institution can increase political awareness among the  
3 Dene, on the colonized, is a contradiction in terms which  
4 appears to have escaped even the most well intended of  
5 local government people.

6  
7 Analysis of the Territorial  
8 Administration. An analysis of the Territorial  
9 Administration 's policy on the development of local  
10 government is, on reflection, really quite simple. As  
11 stated earlier, the Territorial Administration had direct  
12 interest in the appearance of a grass-roots political  
13 development. However, whenever the process threatened  
14 to become more than appearance, immediate attempts were  
15 made to limit and control the process. Rather than  
16 welcoming this as the success of the Local Government  
17 Program, the Territorial Administration has attempted  
18 to diffuse and limit that development by channeling it  
19 into administrative complexities and bureaucratic  
20 lethargy.

21 In my opinion, it is this  
22 continued response of attempting to control, diffuse and  
23 undermine the political self-determination of the native  
24 people within the Territories which most clearly shows  
25 the continuing colonial nature off the Territorial  
26 Administration in the north.

27 The Territorial Administration  
28 has an interest in maintaining and enhancing its control  
29 over the Dene and their land. It seeks to impose a system  
30 of institutions and decisions foreign to the Dene, a  
system serving non-Dene interests. Not only does



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1 this system not serve Dene interests but indeed it  
2 divides the people and undermines their ability to  
3 maintain their own cultural patterns.

4 In my opinion, therefore, the  
5 Territorial Administration does not represent the  
6 interests of the Dene. The growth of the Territorial  
7 Administration in no way represent the decolonization  
8 of the Dene.  
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1                   Although I have focused on the  
2 programs of the Department of Local Government, the  
3 situation within other departments is of a similar  
4 character. In fact, it is the Department of Local  
5 Government which is generally regarded as the decoloniz-  
6 ing wing of the Territorial administration with the other  
7 departments having a somewhat more directly colonial  
8 view.

9                   Further, the very nature of the  
10 responsibilities given and more importantly, not given  
11 to the Territorial administration confirm its colonial  
12 character. With non-renewable resource development  
13 being the most important issue in the Territories  
14 today it is the Federal Government, not the Territorial  
15 administration which maintains full and direct control  
16 in this area. Thus both in the nature of carrying out  
17 its responsibilities and in the range of responsibilities  
18 it holds, the Territorial administration is a  
19 colonial institution.

20                   Nordicity. In the overview  
21 hearings, Professor Hamelin suggested to the Mackenzie  
22 Valley Pipeline Inquiry that what was needed in northern  
23 political development was an injection of nordicity.  
24 According to Professor Hamelin:

25                   "...this means if we do something in the north.  
26 let us do it according to a northern spirit,  
27 a northern mentality. This very northern approach  
28 cannot be taken for granted among the powerful  
29 southerners who usually manage the major  
30 decisions affecting the north. Above all,



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1 through this nordicity principle I expect each  
4 of us to try to estimate the quality of his  
3 own northern activity."

4 Professor Hamelin seems to  
5 suggest that nordicity is some sort of measurable  
6 quality of one's mentality which grows out of the  
7 geographical latitude at which one lives:

8 "The concept of nordicity is diversified.

9 It applies not only to the mentality of the  
10 people, but can be used geographically to  
11 estimate the degree of northness of any  
12 given locality."

13 It is my opinion that the  
14 concept of nordicity only further obscures rather than  
15 clarifies the political realities of the Canadian north.  
16 The issue is not the mentality of the politicians  
17 and bureaucrats making decisions for the Dene, but  
18 the very fact that they, and not the Dene are making those  
19 decisions. Professor Hamelin would advocate perhaps  
20 a more benevolent colonialism, but colonialism just  
21 the same. The essential issue which Professor Hamelin  
22 does not address is the right of present decision-makers  
23 whether imbued with nordicity or not, to be making  
24 decisions for the Dene.

25 THE COMMISSIONER: Mr. Bean,  
26 to be fair to Professor Hamelin, he is -- his  
27 presentation at the overview was prepared from the  
28 French language which is his first language, and was  
29 translated in a way that I don't think he felt was  
30 altogether satisfactory, and it may be that the concept



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1 of nordicity that he enunciated was rather more subtle  
2 than the way it actually came out. That may or may not  
3 be so, but I recollect that it was apparent to all of  
4 us that English was Professor Hamelin's second language  
5 and gave him, I think he wouldn't mind my saying this,  
6 some little difficulty from time to time in the course  
7 of his presentation. However, carry on.

8 A Thanks for pointing that  
9 out. The essential point is the last one. The essential  
10 issue is the right to decision-making regardless of what  
11 mental outlook they have to be making decisions for the  
12 Dene.

13 A pipeline and political  
14 institutions. There are several straightforward ways  
15 in which a pipeline, either pipeline, will support the  
16 colonizing process of the Dene people.

17 1. The creation of Settlement Councils in each  
18 community has created a forum whereby non-Dene can  
19 very quickly take over the political life of a Dene  
20 community. Ironically, a person moving to Fort  
21 Norman, for instance, from the provinces would be more  
22 familiar with the rules governing the structure and  
23 process of the Fort Norman Settlement Council than the  
24 average Dene resident of Fort Norman. Thus the  
25 inevitable influx of settlers either directly or indir-  
26 ectly related to pipeline development would sooner or  
27 later involve themselves in the present community  
28 councils.

29 Gemini North states that the  
30 drive to establish local government in the Mackenzie



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Region:

"...has eroded the powers of the Band Chief and Council by substituting an elected council based on community affiliation rather than one based on ethnic origin."

Gemini North states further:

"...a substantial in-migration of white southerners in high impact communities could reduce the roles of native northerners on community councils."

The Van Ginkel Associates study states that:

"...the hydrocarbon industry will have an urgent need for workers and directly and indirectly will create thousands of jobs within the Mackenzie Valley -- more jobs than could be filled by all the workers resident in the region."

The Gemini North study also has a table indicating the percentage of participation on Settlement or Hamlet Councils by residents, non-permanent residents and administrators. They conclude:

"It is clear that the percentage of transient residents on councils is generally less than the percentage of permanent residents, native or white. Overall, the settlements appear to be less reliant on outsiders than they have in the past."

Such statistics can be misleading, however, because in my experience there is no need for the majority of the council to be non-Dene before the Dene are effectively excluded from acting



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on their interests. In the cases with which I am familiar where non-natives have dominated Settlement Councils, there have been only one or two non-native councillors. However, because the council is an institution which is foreign to the natives and familiar to the non-natives, even one non-native can very easily dominate and manipulate. It is inevitable that to a greater or lesser degree, settlers will be attracted to the Dene communities as a spinoff of the pipeline project. I am told that in Coppermine, for instance, two new businesses have been started as a result of increased cash flow to that community resulting from employment with Gulf Oil. In both cases, a pool room and a restaurant, the businesses are owned and operated by non-natives.

Thus, as long as the community unit of government is a non-native institution, as soon as settlers move to such communities as they inevitably will, non-natives will increasingly take over the local community government.

2. As indicated earlier in this study, the values of private property and the accompanying tax base are not those of the Dene culture. An effect of the pipeline development will be, however, to reinforce such non-Dene systems within Dene communities.

The Van Ginkel Report states:

"The creation of jobs and income, as detailed in the report, will increase the revenues of the communities and will contribute to the financing the improvement of communities."



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At present there are two mechanisms to provide for financing the above improvements. Both are foreign to the Dene. The first is taxes to the Federal Government which would trickle down to the communities in the form of federal or Territorial Government programs. I have earlier indicated how programs such as the Housing Association program have served to colonize northern natives.

The second mechanism is by property tax within each community. Again it is self-evident how such a system is foreign to the Dene and how reinforcing such a system would also serve to undermine the culture and values of the Dene. As far as I am aware, the applicant proposes no other mechanisms for such community improvements. Therefore we are left with a situation where some communities may make some material improvements because of the pipeline, but at the cost of becoming further colonized by an alien political-economic system.

3. Because of the political system presently imposed in Dene communities, the increased problems created by a pipeline for that community will require that the local residents become further dependent on non-Dene experts who are familiar with the imposed system. Thus, instead of becoming more independent, politically and otherwise, the Dene will become more dependent on experts who are familiar with the imposed system. Because the system presently operating is non-Dene, the experts in that system are also non-Dene.

4. The pipeline applicants do not argue that their



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1 project will not create some social problems. The  
2 Van Ginkel Report states:

3 "The associated growth would create or intensify  
4 some social problems. But with the proposed  
5 starting date of pipeline construction there  
6 should be enough lead time to permit the  
7 institution of protective and ameliorative  
8 measures where this is considered necessary.  
9 Careful, rational and relevant planning can  
10 minimize possible negative impacts."

11 Such problems are likely to  
12 be dealt with by increased or new government programs,  
13 such as the government may decide. Along with all the  
14 other areas with which government will be expected to  
15 deal, it is clear that the pipeline will mean a  
16 sizeable increase in the bureaucracy of the government.  
17 Big developments mean big government. However, I have  
18 demonstrated that the present Territorial Government  
19 is in reality a colonial institution. Thus what is  
20 ultimately being proposed is an increase in the very  
21 bureaucracy which is presently colonizing the Dene.  
22 Such an increase can only result in the further  
23 colonization of the Dene. If a small administrative  
24 -- if a small administration is already colonizing the  
25 people, increasing the size of the administration will  
26 not give the people freedom.

27 These are the more evident  
28 ways in which the proposed pipelines would serve to  
29 destroy further the Dene culture and ensure the increa-  
30 sed colonization of the Dene people.



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From reading the social-economic statements of the pipeline companies, there are several more general but no less important facts to point out.

First, various authors have pointed out the role that myths serve to rationalize the colonizers activities. Such myths are of course held to be true by those who believe them. They are usually collective myths believed not only individually but serving as part of a colonial ideology. They allow the colonizer to mask and mystify his true interests -- that of control for his own benefit -- under a more acceptable guise.

The colonizer can then carry on his function unperturbed by the moral dilemma which might otherwise arise from his efforts to manipulate and control the lives and land of others. The fact that an institution holds colonial myths would be a fair indication that that institution carries out a colonial function.

First let me point out a major colonial position shared by the two applicants and the Territorial administration. That is the refusal to recognize the collective rights of the Dene. Nowhere do the applicants refer to the Dene as a collective, as a people with a collective interest. Continually the Dene are treated only as individuals. It is this failure to even acknowledge the existence of the Dene as a distinct people which is the ultimate in contempt for the Dene. Not only do the applicants



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1 not state whether or not the Dene have political  
2 rights, they do not even entertain the possibility.  
3 The pipeline companies thus never deal with the issue  
4 of the Dene to be a self-determining people. They do  
5 not even acknowledge the right of the Dene to exist,  
6 self-determining or otherwise.

7                    Given then that the political  
8 rights of the Dene as a people are ignored, what  
9 assumptions are made about the original inhabitants  
10 of the Mackenzie Valley? The pipeline applications  
11 appear to include the following colonial myths:

1. The myth that native culture is static and unchanging. Any consideration that Dene culture might evolve and change to cope with the present reality is unforeseen. Instead, the argument goes that Dene culture is static -- it consists of trapping, hunting, and living off the land in a more or less primitive fashion. The argument proceeds that change is normal and natural and by implication Dene culture is less than normal. Therefore the applicant is justified in imposing change on the Dene.

The myth of a static native culture obviously serves to allow the colonizer to proceed with his activity with a good conscience; he is only creating the conditions of reality in a culture which he sees as not being able to cope. Such a myth becomes self-fulfilling. By not allowing a people to evolve the mechanisms to deal with the here and now, the culture is in fact degraded and static.

30 The fact, of course, is that



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1 what is at issue is not whether or not native culture will  
2 change but who controls that change. Will the changes  
3 in Dene culture be a form of internal evolution; that  
4 is self-determination, or externally imposed forced  
5 change into which the Dene must fit?

6 2. The second pervasive myth is that full employment  
7 equals freedom for self-determination. Slaves in the  
8 pre-Civil War South were fully employed, but they were  
9 still quite colonized. Higher wages would have done  
10 little to give them more freedom. Just because a person  
11 is employed, even at a well-paying job, does not of  
12 itself guarantee that that individual is free. Just  
13 because a people are employed does not guarantee that  
14 the people are self-determining. Again the issue is  
15 who controls the employment. Who decides what the  
16 job is and what purpose it will serve? If the Dene end  
17 up working for the non-Dene in pursuit of non-Dene  
18 interests, then it is difficult to classify such a  
19 situation as the self-determination of the Dene.

20 3. The third myth is somewhat tied to the second.  
21 It is the myth that material well-being equals freedom  
22 or fulfillment. While western society appears to be  
23 questioning this myth, it is very much alive and  
24 well in the north. In discussing the impact of the  
25 pipeline on the communities, the Van Ginkel Report  
26 states:

27 "The physical aspect of a community is used  
28 as a measure of the quality of life."

29 (QUALIFICATIONS & EVIDENCE OF W. BEAN MARKED  
30 EXHIBIT 573)



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Does the applicant really believe that the quality of life in the Dene community can be measured by the size, number and condition of the buildings, roads, water and sewage lines? What about other verifiable factors such as rates of alcoholism or suicide? What about indicies such as use of native language, participation in political process or the amount of leisure time available?

Arctic Gas states that:

"...the new economic opportunities associated with the proposed pipeline and related development can be expected to reduce economic disparities, to improve social facilities and as a consequence, to broaden political consciousness and the opportunity for northern residents to participate in the decision making process."

The applicant is asserting a direct relationship between economic change and political consciousness or between material well-being and self-determination.

Again, it is a variation of the "money brings happiness" myth. The general definition of political consciousness is an awareness of and action in one's true interests. At the collective level, it is an awareness of an action in the collective interest. The applicant is suggesting that economic opportunity (specifically jobs) increase one's awareness of what is or what is not in one's political interest. In fact, no such connection exists.



Bean, Kurszewski  
Cheezie Barnaby  
In Chief

Economic opportunity is neither a necessary nor a sufficient condition for political consciousness. Economic change is not of itself decolonizing. There is in fact a school of thought which holds the opposite view that relative lack of material wealth is more likely to support the development of the awareness of one's true interests.

In any event, it is obviously a myth the material well-being is the equivalent of self-determination or freedom.

4. A fourth myth which is not itself colonial but can be seen to be served colonial interests when applied to the Dene in this particular setting is that negative social impact is merely opinion and therefore not on the same level of importance as scientific fact.

The Van Ginkel report states that:

"In terms of the social impact of the decision to build, the conclusions are, of necessity, subjective."

It appears, however that only the negative impacts of a pipeline are deemed to be subjective. No such conditions are applied to statements such as:

"Friction between social and ethnic groups can be reduced by ensuring that employment in income is equally available to all groups and that housing, community facilities and services are equal for all."

or

"Jobs and income are the only solution for poverty."



Bean, Kurszewski,  
Cheezie, Barnaby  
In Chief

1                   The stance thus seems to be  
2                   that views which support the pipeline are facts, views  
3                   which disagree are opinions. By relegating the opposing  
4                   views to the status of "subjective opinions" an attempt  
5                   is made to soften the harsh truth that the applicant's  
6                   proposal in the end would further colonize the Dene.

7                   5.           The last colonial myth  
8                   is that of unilinear cultural evolution or the idea  
9                   that there is only one road to progress. Ironically,  
10                  this road just happens to lead to the same lifestyle  
11                  as the colonizer and places him in a position of  
12                  believing in himself as a higher form of evolution than  
13                  that of the colonized. For the Dene, this myth states  
14                  that the only way to progress is to become part of the  
15                  capitalistic wage economy system, controlled by the  
16                  multinationals.

17                  The pipeline applicants state  
18                  that the Dene have only one choice, either an essentially  
19                  pre-contact way of life or to work for the multinationals.

20                  In truth, it is a false view  
21                  to suggest that the only route to modernization is to  
22                  directly or indirectly work for a multinational corpora-  
23                  tion. Such a view is not far short of the myth of  
24                  Manifest Destiny -- the idea that the colonizer is  
25                  embarked on the God given task of upgrading the heathens.  
26                  God is on the side of the colonizer and wants everyone  
27                  to lead a way of life like the colonizer. All other  
28                  ways of life are inferior.

29                  Surely the truth is that there  
30                  are alternatives. In truth, there is an alternative



Bean, Kurszewski,  
Cheezie, Barnaby  
In Chief

1 which is the Dene themselves developing their own  
2 economy as they see fit. An alternative where the  
3 political rights of the Dene to collectively decide  
4 for themselves would be recognized, rather than degraded  
5 and undermined. That is the land claim of the Dene.  
6 A claim to their right as people to evolve and develop  
7 their own institutions to deal with present and future  
8 reality. Surely such an alternative is at least as much  
9 a part of progress as that which the pipeline applicants  
10 propose.

11 It becomes obvious from recogniz-  
12 ing the present colonial nature of the Territorial  
13 Administration and the colonial nature of the applications  
14 for massive development of the Dene homelands, that the  
15 political rights of the Dene could not be protected  
16 should such development begin prior to a satisfactory  
17 settlement of the land claims.

18 The Territorial Administration  
19 and the pipeline applicants seek to colonize the  
20 Dene. The Dene have stated their right not to be a  
21 colonized people. Regardless of any other conditions,  
22 Mr. Commissioner, unless there is first a full recogni-  
23 tion of the right of the Dene to decolonize themselves,  
24 projects such as the proposed pipeline will only serve  
25 to further colonize the Dene.

26 If the interests of the Dene  
27 are to be protected, then the land claim of the Dene,  
28 that is, the right of the Dene not to be a colonized  
29 people must be recognized first before development begins.  
30



Bean, Kurszewski,  
Cheezie, Barnaby  
In Chief

1  
2 MR. BELL: The summaries of  
3 the witnesses' testimony and the appendices thereto  
4 have been filed as exhibits, as has the complete text of  
5 Mr. Bean's evidence and a copy of the study on which it  
6 is based.

7 MR. SIGLER: I'd like to  
8 raise an objection to certain exhibits going as evidence  
9 before the Inquiry. Exhibits to Mr. Bean's written  
10 testimony, two items of them. One being what's reported  
11 to be letter from the Commissioner of the Northwest  
12 Territories to the Minister dated October 8, 1971. That  
13 is not signed and is not shown as being official at all.  
14 The other being -- going in as evidence what's reported  
15 to be a memo from the Commissioner to the Director of  
16 the Department of Local Government dated December 12th,  
17 1975.

18 The only reference is that is  
19 a copy of something that was published in a local news-  
20 paper. Now, my position isn't to defend the Department  
21 of Local Government -- the Territorial Government, but  
22 merely that this Inquiry is attempting to determine what  
23 the government policy is towards local government, should  
24 not get it from such sources as this, unless there's  
25 further proof as to what the exhibits purport to be  
26 actually are those things.

27 At a meeting of Counsel last  
28 evening, I specifically raised the question with Mr.  
29 Scott as to what limits there were on evidence going in  
30 before this Inquiry and he stated to me that there were



Bean, Kurszewski,  
Cheezie, Barnaby

1 limits on what could properly go in as evidence.  
2

3 I submit that these two items  
4 go beyond the proper rules of evidence before an Inquiry  
5 such as this.  
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Bean, Kurszewski,  
Cheezie, Barnaby

MR. SCOTT: Mr. Commissioner,

Can I make the suggestion -- I would generally agree with Mr. Sigler that a letter that is unsigned -- I haven't seen the letter by the way, but a letter that is unsigned might not be an appropriate exhibit and therefore what I would propose is that I should take copies of the disputed -- first of all, that <sup>the</sup> letters should be introduced as an exhibit because they're part of a paper though perhaps no weight is to be given to them if they're not signed, but that I will take the responsibility of writing the Commissioner's office to ask if there is anything inaccurate about those letters and of course, if he asserts that they are not his letters, then they will not be given much weight.

It seems to me that that is the way to deal with this to be sure that the letter is not put forward, that the Commissioner had nothing to do with.

MR. SIGLER: My concern, sir, is say not to defend the Department but it is important to my client, to know what government policy is towards local government and we want to make sure that we're dealing with what actually is their policies, not what may be published in a newspaper as being their policy.

THE COMMISSIONER: Well no, you are entitled to raise that, Mr. Sigler, because you represent the municipalities, and I think that we should accept Mr. Scott's suggestion and proceed in that way. Is that all right with you, Mr. Bell?



Dean, Kurszewski  
Cheezie, Barnaby

1 MR. BELL: Mr. Scott's  
2 suggestion is very reasonable.

3 THE COMMISSIONER: Am I to  
4 understand that you are going to cross-examine this  
5 panel now or is the week at an end?

6 MR. SCOTT: Well, Mr. Commis-  
7 sioner, I'm a southerner and my plane doesn't leave  
8 until 9:30 so I have nothing to do until then but it  
9 may be that Mr. Sigler and Mr. Bayly and you, sir, and  
10 Mr. Bell, will have other things to do.

11 THE COMMISSIONER: Well, what  
12 time is it? If you like, just take ten seconds to  
13 confer among yourselves and then let's decide whether --  
14

15  
16 MR. SCOTT: Mr. Commissioner,  
17 Mr. Sigler would normally go first if Mr. Bayly is not  
18 here and I think his view, as it would be mine, if it  
19 is not inconvenient for the panel to come back in our  
20 next day that we would prefer to postpone the cross-  
21 examination until that day.

22 THE COMMISSIONER: Did you  
23 want to confer with the panel, Mr. Bell?

24 MR. BELL: Perhaps I should.  
25  
26  
27

28 The situation  
29 appears to be this, Mr. Commissioner, that it might not  
30 be possible to reconvene this panel on exactly the  
31 26th of April when we reconvene. They're willing to



Bean, Kurszewski,  
Cheezie, Barnaby

1 be cross-examined at this point and to be recalled on a  
2 mutually acceptable date if cross-examination is not  
3 completed. I think the panel should be cross-examined  
4 as a whole. I think, Mr. Bean has indicated to me that  
5 he would prefer to have his colleagues with him.

6 MR. STEEVES: I didn't  
7 understand what Mr. Bell was saying. I thought he  
8 was saying first of all that they couldn't be brought  
9 together at one time, but he would prefer that they all  
10 be cross-examined at the same time. Am I right in that?

11 MR. BELL: I said they couldn't  
12 be brought together on the 26th of April.

13 MR. STEEVES: Oh, sorry.

14 MR. BELL: But at some other  
15 date they may be brought together at one time.

16 THE COMMISSIONER: Well, the --

17 MR. SCOTT: Mr. Commissioner,  
18 wouldn't it help if I took 5 minutes with Mr. Bell to  
19 see what we can work out?

20 THE COMMISSIONER: All right,  
21 take five minutes with all counsel and just see how  
22 long this is going to take. if cross-examination  
23 proceeds.

24 (PROCEEDINGS ADJOURNED)

25 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

26 MR. SCOTT: The situation is  
27 that Mr. Barnaby cannot come back at a convenient time.  
28 He having to earn his livelihood somewhere else, and so  
29 that anybody who has questions of him is to ask them  
30 now. The other three members of the panel, two of whom



Bean, Kurszewski  
Cheezie, Barnaby  
Cross-Exam by Sigler

1 will be engaged the next week of our hearing organizing  
2 a community hearing will come back on the second week  
3 of our hearing; that is, on the Monday or Tuesday of  
4 the second week of the next round of formal hearings and  
5 I gather that's satisfactory to all counsel. So perhaps  
6 I should begin by, as Mr. Bayly isn't here, asking Mr.  
7 Sigler if he has any questions of Mr. Barnaby.

8 CROSS-EXAMINATION BY MR. SIGLER:

9 Q Thank you, Mr. Scott.

10 Mr. Barnaby, beginning on page 3 of your written  
11 evidence, you describe your frustration with the  
12 budgetary system of the Territorial Government --  
13 Territorial Council goes through, that you are a part of  
14 when you are on the Territorial Council.

15 Then, you go on, I believe,  
16 it's fair to say and describe what you see as the failings of  
17 the Territorial Government and the Territorial Council  
18 system that we have now in the north. I would like you  
19 to go further than that and tell the Inquiry what you  
20 see, first of all, that the budgetary process should be,  
21 that the Territorial Council should go through to get  
22 funds from the Federal Government, and secondly, what  
23 form of Territorial Council we should have. I would  
24 like you to be as specific as you can.

25 WITNESS BARNABY: Well, I can  
26 tell you what is wrong with it. I can't give you no  
27 positive solution. That would have to be brought up  
28 with a lot of people, I guess.

29 Q My question wasn't what --  
30 you have already told the Inquiry what was wrong with it.



Bean, Kurszewski,  
Cheezie, Barnaby  
Cross-Exam by Sigler

1 I want you to tell me what the solution is.

2 A You can't ask me to  
3 come up with solutions. I'm just one guy in the whole --

4 Q You don't have any  
5 solutions?

6 A Well, like I said, I  
7 could just tell you what is wrong with it.

8 MR. SIGLER: Thank you. I  
9 have no further questions.

10 A Well, well --

11 THE COMMISSIONER: Go ahead.

12 A Well, I could -- the  
13 whole thing should start right from the communities from  
14 the people, what they find important. Like I think it  
15 was brought up there in the talk about local  
16 government that they find garbage and sewage and  
17 roads like that important. But from the people's point  
18 of view, there is -- we have different things that are  
19 important to us. We concern ourselves with each other,  
20 with looking at the needs of each other, not the needs  
21 of the community, you know, not the needs of the  
22 physical part of the town but the human beings in it.

23 So, if we had the money  
24 we wouldn't spend it on 3,000 white people trying to  
25 tell us what to do, we would spend it on each other.  
26 We wouldn't pay nobody to administrate. We would spend  
27 it on the positive part of doing what we feel is good  
28 for ourselves.

29 MR. SIGLER: If we had the



Bean, Kurszewski  
Cheezie, Barnaby  
Cross-Exam by Sigler

1 money -- what kind of money are you talking about?

2 A Well, the budget, the  
3 money that is being wasted now in the Territories, the  
4 taxpayers' money from the south. You know, everybody is  
5 kicking about it and you know, kicking about  
6 bureaucracy spending money in the south. Now, they  
7 got a building of a bureaucracy here in the north too,  
8 you see, the same damn thing, you know. Nobody asks  
9 the people. We have more common sense than that.

10 Q You say, you would like  
11 to see a system that the people in the north created  
12 themselves?

13 A Yes. You know, we  
14 like I tried to bring out, we try to make decisions  
15 everybody for himself and accept the responsibility;  
16 we don't hire somebody to administer a program. We  
17 know what we want. We just do it for ourselves.

18 Q You don't have any  
19 specific systems in mind yet when you say that -- you  
20 just go so far as to say that a system has to be created  
21 by the people in the north?

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Bean, Kurszewski, Cheezie, Barnaby  
Cross-Exam by Sigler

1                   A     Yes, to cope with what's  
2 coming, I guess. Our own ways have really been  
3 corrupted right now and we     should straighten up  
4 our own house, I guess.

5                   Q     Now, in your paper you  
6 have referred to the Dene land claim . I wonder if  
7 you could tell the Inquiry in more detail what  
8 you see as the nature and extent of Dene land claim ?

9                   A     I don't understand that.  
10 You'll have to make it more simple, I guess.

11                  Q     For example, how much  
12 land is being claimed when you are referring to the  
13 Dene land claim? Are you talking about the whole  
14 Northwest Territories?

15                  A     You already know that  
16 we claim 450,000 square miles. I don't know, what  
17 more do you want?

18                  Q     You're referring then  
19 to the land covered by the caveat?

20                  A     Well, that's as far as  
21 we've gone right now.

22                  Q     Well, is it -- are you  
23 saying it will go further than that then?

24                  A     It's up to the people.  
25 You know, you're trying to trap me into making a state-  
26 ment that will decide something. I can't do that.  
27 These things all come out by the people meeting together

28                  Q     So are you saying you  
29 will support it whether it's the 450,000 square miles  
30 covered by the caveat, or whether it's the whole



Bean, Kurszewski, Cheezie, Barnaby  
Cross-Exam by Sigler  
Cross-Exam by Scott

1 Northwest Territories, or whether all of Western  
2 Canada?

3 A We have to be reasonable,  
4 we can't, you know -- I mean we know what lands we've  
5 always used. We don't go travelling all over down in  
6 Southern Canada or all over. We have our own lands that  
7 we've used traditionally and it's what -- that's what  
8 the claims is based on.

9 Q So you'd say it would  
10 be limited to the traditional areas.

11 A Yes.

12 Q That the people occupied.

13 A Yes.

14 MR. SIGLER: I have no further  
15 questions, sir.

16 MR. SCOTT: Mr. Hollingworth?

17 MR. HOLLINGWORTH: I have no  
18 questions.

19 MR. SCOTT: Mr. Steeves?

20 MR. STEEVES: I have no  
21 questions.

22

23 CROSS-EXAMINATION BY MR. SCOTT:

24 Q Mr. Barnaby, I've got one  
25 question and it's about how you decide things, and let's  
26 take as an example the highway that one of the panel  
27 talked about coming into Fort Smith. Do you know  
28 the highway that was talked about?

29 A M-hm.

30 Q To Fort McMurray. Well



Bean, Kurszewski, Cheezie, Barnaby  
Cross-Exam by Scott

1 now, Fort Smith is a town that is 60% Dene and 40%  
2 white, is that right? More or less.

3 A Well, I'm not from Fort  
4 Smith.

5 Q Oh, I'm sorry.

6 THE COMMISSIONER: Mr. Barnaby  
7 is from Fort Good Hope.

8 MR. SCOTT: I'm sorry, sir, I  
9 thought you were from Fort Smith and the question  
10 doesn't apply to you, and perhaps -- well, let's take  
11 Good Hope as an example. If someone wanted a highway  
12 to come into Fort Good Hope, and the community was  
13 wanted to decided about it, how do you think they would  
14 do it?

15 A Well, I have to give  
16 you an example first. The highway stopped at Wrigley.

17 Q I know.

18 A We couldn't, you know,  
19 if we wanted a highway we have to go to Wrigley, to  
20 Norman Wells, Fort Norman, all over the place.

21 Q Well, let's take this  
22 example. Supposing the Territorial Government or the  
23 Federal Government come along and say, "we're thinking  
24 of putting in an airstrip, a new airstrip."

25 A They are.

26 Q They are? All right.

27 All right, well that's a good example then, and the  
28 people begin to hear about this, how do you think the  
29 people of Fort Good Hope should decide whether they  
30 want that airstrip or not?



Bean, Kucszewski, Cheezie, Barnaby  
Cross-Exam by Scott

1                   A     Well, it's being talked  
2     about slowly now within the whole community. What we  
3     are talking about is the need first of all, if it don't  
4     make sense to us to have a large airport, well we  
5     probably wouldn't support it.

6                   Q     And when you say it's  
7     being talked about, is it being talked about from house  
8     to house, among friends, or are there any meetings?

9                   A     Well, no meetings yet,  
10    it's just being talked about house to house right now.

11                  Q     All right. Well now after  
12    it's been talked about house to house, what will happen  
13    next?

14                  A     Well, if there is nobody  
15    pushing it it will probably die right there.

16                  Q     Let's say there's  
17    someone pushing it, will there be a meeting?

18                  A     Oh yes, for sure, yes.

19                  Q     And what happens at the  
20    meeting, it's talked about again, is it?

21                  A     Yes.

22                  Q     And then what happens  
23    at the end of the meeting?

24                  A     Well, it will probably  
25    be talked about again, if there is, you know, if there  
26    is strong opposition to it well then it starts a  
27    battle there.

28                  Q     And how is the battle  
29    decided in the meeting?

30                  A     Well, battle's just



Bean, Kurszewski, Cheezie, Barnaby  
Cross-Exam by Scott

1 started, you know you don't decide what to do, you  
2 just oppose it and use whatever you have to.

3 Q I see, and what -- maybe  
4 this has never happened, but what would happen if there  
5 were some on one side and some on the other?

6 A Well, call for meetings,  
7 I think. The people usually stick together, they all  
8 see the same thing. I think when it's talked about  
9 it's talked about in terms of people, human beings  
10 in that community and little savings here and there,  
11 so it comes out that decisions are, you know, decisions  
12 are pretty well the majority of the town.

13 MR. SCOTT: All right, thank  
14 you very much. I apologize that I thought you were  
15 from Fort Smith, but that's not so bad either, eh?  
16 Those are all my questions, sir.

17 MR. STEEVES: I'm sorry, I  
18 didn't hear what the witness said at the end. Did he  
19 say that decisions were made by the majority of the Town?  
20

21 THE COMMISSIONER: No, I think  
22 he said that the majority of decisions are worked  
23 out in that way. Did I understand you?

24 A Yes, most people will  
25 probably -- we don't stop and vote on something. We  
26 talk about it till everybody agrees to it, you  
27 know, one way or the other.

28 Q Did I understand you,  
29 Mr. Barnaby, to say that the traditional way of  
30 working out a problem is to discuss it until everybody



Bean, Kurszewski, Cheezie, Barnaby  
Cross-Exam by Scott

1 agrees, until a consensus is reached? I'm not trying  
2 to use big--

3 A Yes, we don't stop half-  
4 way if somebody asks for a vote.

5 THE COMMISSIONER: Well, I  
6 think that's what I understood. I didn't understand  
7 this agreement among counsel, but where are we now?

8 THE SCOTT: The three members  
9 of the panel will return the second week of formal  
10 hearings next.

11 THE COMMISSIONER: All right.

12 (WITNESSES ASIDE)

13 THE COMMISSIONER: So we  
14 adjourn then until next week -- tomorrow is Good  
15 Friday and next week we are not sitting and we return  
16 Monday, a week Monday;

17 MR. SCOTT: Yes sir.

18 THE COMMISSIONER: Well, members  
19 of the panel, thank you very much. I understand we'll  
20 see three of you again, Mr. Bean, Mr. Kurszewski, and  
21 Mr. Cheezie; but thank you, Mr. Barnaby for coming.  
22 I understand you won't be coming back and we all  
23 appreciate the presentation you made and the discussion  
24 we must had with you. It was very helpful.

25 So ladies and gentlemen, we'll  
26 adjourn then till a week Monday at one o'clock and  
27 we'll continue with the Brotherhood's evidence.

28 (PROCEEDINGS ADJOURNED TO APRIL 26, 1976)

29

30

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M835

Vol. 144

AUTHOR

Mackenzie Valley pipeline inquiry:

TITLE

Vol. 144 April 15, 1976

DATE DUE

BORROWER'S NAME

347

M835

Vol. 144





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MACKENZIE VALLEY PIPELINE INQUIRY

Government  
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF

(a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A  
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS  
CROWN LANDS WITHIN THE YUKON TERRITORY AND  
THE NORTHWEST TERRITORIES, and

(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY  
THAT MIGHT BE GRANTED ACROSS CROWN LANDS  
WITHIN THE NORTHWEST TERRITORIES

FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND  
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,  
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE  
PROPOSED PIPELINE

(Before the Honourable Mr. Justice Berger, Commissioner)

Yellowknife, N.W.T.,

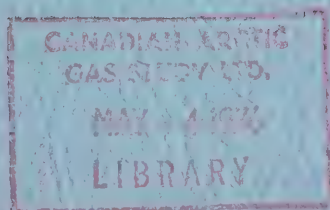
April 26, 1976.

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PROCEEDINGS AT INQUIRY

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APPEARANCES:

Mr. Ian G. Scott, Q.C.,  
Mr. Stephen T. Goudge,  
Mr. Alick Ryder and  
Mr. Ian Roland for Mackenzie Valley Pipeline  
Inquiry;

Mr. Pierre Genest, Q.C.,  
Mr. Jack Marshall,  
Mr. Darryl Carter and  
Mr. J.T. Steeves for Canadian Arctic Gas Pipeline  
Limited.

Mr. Reginald Gibbs, Q.C.,  
Mr. Alan Hollingworth and  
Mr. John W. Lutes for Foothills Pipe Lines Ltd.;

Mr. Russell Anthony,  
Prof. Alastair Lucas and  
Mr. Garth Evans for Canadian Arctic Resources  
Committee;

Mr. Glen W. Bell and  
Mr. Gerry Sutton for Northwest Territories  
Indian Brotherhood, and  
Metis Association of the  
Northwest Territories;

Mr. John Bayly and  
Miss Leslie Lane for Inuit Tapirisat of Canada,  
and The Committee for  
Original Peoples Entitle-  
ment;

Mr. Ron Veale and  
Mr. Allen Lueck for The Council for the Yukon  
Indians;

Mr. Carson Templeton for Environment Protection  
Board;

Mr. David H. Searle, Q.C. for Northwest Territories  
Chamber of Commerce

Mr. Murray Sigler for The Association of Munici-  
palities;

Mr. John Ballem, Q.C. for Producer Companies;

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Rolfe, Brownstone, Draimin,  
Clarke, Menez, Smith  
In Chief

Yellowknife, N.W.T.,

April 26, 1976.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. SCOTT: Mr. Commissioner,  
I wonder if I could deal with two matters. First of all  
I would appreciate it if I could see counsel or other  
participants appearing at the hearing for five minutes  
at the end of the day. That's the first item.

The second item is, under our  
participation rules I am advised that the Mental Health  
Association of the Northwest Territories wishes to be-  
come a participant and will shortly file a list of  
documents, as the rules require. They will be represented  
by Mrs. Jo MacQuarrie, who is here sitting at the second  
counsel table. That's all I have. Mr. Bell.

MR. BELL: Mr. Commissioner,  
I'd like to present to you our next panel. Starting  
on the far right is Mr. Roger Rolfe. Next to him is  
Mr. Meyer Brownstone. Next to him is Mr. Tim Draimin;  
Mr. Tony Clarke; Father Lou Menez; and Father Bill Smith.

ROGER ROLFE, sworn,  
MEYER BROWNSTONE, affirmed,  
TIM DRAIMIN, sworn,  
TONY CLARKE, sworn,  
FATHER LOU MENEZ, resumed,  
FATHER WILLIAM F. SMITH, sworn:

DIRECT EXAMINATION BY MR. BELL:

Q If I could start with you,  
Mr. Rolfe. Your present position is the Education  
Co-ordinator for Oxfam-Canada (Ontario Region).

WITNESS ROLFE: That's correct.



Rolfe, Brownstone, Draimin,  
Clarke, Menez, Smith  
In Chief

1 Q You have a B.A. from the  
2 University of Toronto and you did post-graduate work  
3 in development studies at the University of Toronto.

4 A Right.

5 Q In 1974 you were on the  
6 research and education staff of the Development Education  
7 Library Project.

8 A Yes.

9 Q That was in Toronto.

10 A Right.

11 Q And in 1975 you joined  
12 Oxfam-Canada as the education co-ordinator and you're  
13 responsible for liaison with the Indian Brotherhood of  
14 Northwest Territories.

15 A That's correct.

16 Q Moving to you, Mr.  
17 Brownstone, you are the National Chairman of Oxfam-  
18 Canada.

19 WITNESS BROWNSTONE: Yes.

20 Q And it's in that capacity  
21 that you appear here today.

22 A Yes.

23 Q You are also a professor  
24 in the Department of Political Economy at the University  
25 of Toronto, and a consulting professor in the Department  
26 of Environmental Studies at York University.

27 A Yes.

28 Q You have a Bachelor Of  
29 Science and a Master of Science and a Ph.D.

30 A Yes.



Rolfe, Brownstone, Drainin,  
Clarke, Menez, Smith  
In Chief

Q And your Ph. D. was in  
public administration and economics.

A Right.

Q Moving to your professional  
experience, from 1960 to 1964 you were the Deputy Minis-  
ter of the Department of Municipal Affairs for the  
Government of Saskatchewan.

A Yes.

Q In addition, in 1961 you  
were the research co-ordinator of Resources for  
Tomorrow Conference, dealing with the Agriculture Section.

A Right.

Q And in 1962 you were  
a United Nations advisor on local government to the  
Government of Jamaica.

A Yes.

Q From 1964 to the present  
you've been a professor in the Department of Political  
Economy at the University of Toronto.

A Yes.

Q From 1964 to 1968 you were  
the research director of the Royal Commission on  
Bilingualism and Biculturalism.

A Yes.

Q In 1969 you were appointed  
to your present post as professor in the Department of  
Environmental Studies at York University.

A Yes.

Q In 1970 you were a member  
of the Tanzania Presidential Commission on Decentraliza-  
tion.



Rolfe, Brownstone, Drainin,  
Clarke, Menez, Smith  
In Chief

1 A Yes.

2 Q And from 1970 to 1973  
3 you were a consultant to the Government of Manitoba  
4 on Urban Government Planning & Northern Development.

5 A Yes.

6 Q And in 1975 you were  
7 consultant to the Government of British Columbia on  
8 health.

9 A Yes.

10 Q You are the chairman of  
11 the Canadian Council on Urban & Regional Research.

12 A Yes.

13 Q A post which you've held  
14 since 1972.

15 A Right.

16 Q You are a member of the  
17 Canadian National Committee of the United Nations Confer-  
18 ence on Human Settlements.

19 A Yes.

20 Q And you've held various  
21 executive positions with Oxfam-Canada since 1971.

22 A Right.

23 Q You are also the author of  
24 the publications listed on page 2 of your witness resume.

25 A Yes.

26 Q Moving on to you, Mr.  
27 Drainin, your present position is as an independent  
28 researcher.

29 WITNESS DRAIMIN: That's correct.

Q You have a B.A. from the



Rolfe, Brownstone, Drainin,  
Clarke, Menez, Smith  
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1 University of Toronto.

2 A Yes.

3 Q From 1973 to 1975 you  
4 were the research director of the Latin American Working  
5 Group.

6 A Yes, I was.

7 Q Would you explain briefly  
8 what that group is?

9 A The Latin American Working  
10 Group is a private educational organization founded  
11 ten years ago to try to --

12 THE COMMISSIONER: I can barely  
13 hear you. Will you move that microphone a little  
14 closer?

15 A The Latin American  
16 Working Group is a private educational organization  
17 founded ten years ago to attempt to create a broader  
18 understanding among the Canadian public of the social,  
19 political and economic issues affecting Latin American  
20 states.

21 MR. BELL: Q You are also a  
22 member of the Ontario Regional Board of Oxfam-Canada.

23 A That's correct.

24 Q And a member of the  
25 Projects Advisory Committee of that organization.

26 A Yes.

27 Q And you are a consultant  
28 to the Task Force on Churches and Corporate Responsibility.

29 A That is correct.

30 Q You are the co-author or  
author of the publications listed in your resume.

A That is correct.



Dolfe, Brownstone, Draimin,  
Clarke, Menez, Smith  
In Chief

1 Q Mr. Clark, you are  
2 presently the Director of the Social Affairs Department  
3 of the Canadian Catholic Conference.

4 WITNESS CLARK: That's correct.

5 Q Could you tell us briefly  
6 what the Canadian Catholic Conference is please?

7 A The Canadian Catholic  
8 Conference is the National Association of the Roman  
9 Catholic Bishops and Cardinals of Canada.

10 Q You have a B.A. in 1966  
11 from the University of British Columbia.

12 A That's correct.

13 Q An M.A. in 1969 from  
14 the University of Chicago.

15 A Yes.

16 Q A Doctor of Ministry in  
17 the -- there's an error in the distributed text. The  
18 degree should be D.Mn., I'm informed and that's a  
19 degree from the University of Chicago in 1974.

20 A That's correct.

21 Q In 1966 and '67, you were  
22 on the teaching staff of the Sorrento center for Human  
23 Development.

24 A Yes.

25 Q Could you tell us what  
26 that is please?

27 A It was a center in which  
28 -- sponsored by the churches in British Columbia where  
29 people came together to examine social and economic  
30 problems facing them and the ethical questions surrounding



Rolfe, Brownstone, Draimin,  
Clarke, Menez, Smith  
In Chief

1 that.

2 Q In 1968 -- from 1968 to  
3 1970 you were on the research staff of the Community  
4 Renewal Society in Chicago.

5 A Yes.

6 Q From 1970 to 1972 you  
7 organized and directed the Planning for People Coalition  
8 in Chicago.

9 A That's correct.

10 Q Could you tell us what  
11 those two organizations are, sir?

12 A The Community Renewal  
13 Society was a -- is a Parachurch agency in the City of  
14 Chicago which centered in on the problems of urban  
15 poverty and racism, and attempted to find ways in which  
16 to address those kind of problems.

17 The Planning for People Co-  
18 alition was an offshoot from the Community Renewal  
19 Society designed to look at the patterns of suburban  
20 planning and development and how they were creating --  
21 participating in the creation of urban poverty and  
22 poverty in ghetto situations.

23 Q From 1972 to '74 you  
24 were a research assistant in the Social Action Department  
25 of the Canadian Catholic Conference and <sup>in</sup> 1974 you were  
26 appointed to your present position.

27 A That's correct.

28 Q Father Menez, you're  
29 the parish priest in Fort Resolution.

30 WITNESS MENEZ: Yes I am.



Rolfe, Brownstone, Draimin,  
Clarke, Menez, Smith  
In Chief

1 Q From 1940 to 1942, you  
2 engaged in philosophy studies in France.

3 A Yes.

4 Q From 1944 to 1949 you  
5 engaged in theology studies at Solignac in France.

6 A That's correct.

7 Q In 1949, you were ordained

8 A Yes.

9 Q Could you briefly describe  
10 your experience since then?

11 A From '49 to the present  
12 time I've been in the Northwest Territories and I spent  
13 first about five years with the Chipewyan Indian along  
14 the Snowdrift and Rocher River. Subsequently 12 years  
15 with the Eskimos of Bathurst Inlet and Perry Island  
16 and then since 1966 I am stationed at Fort Resolution;  
17 that would be ten years.

18 Q Moving on to you Father  
19 Smith, you are at present the Project Officer for the  
20 Canadian Catholic Organization for Development and Peace.

21 WITNESS SMITH: That's correct.

22 Q Your education began with a  
23 Cours classique from 1953 to '57 at the Universite Saint  
24 Joseph in Moncton, New Brunswick.

25 A Correct.

26 Q In 1958 you obtained a  
27 B.A. in philosophy from the University of Ottawa.

28 A That's correct.

29 Q In 1958 and '59 you  
30 engaged in philosophy studies in Toronto.



Rolfe, Brownstone, Drainin,  
Clarke, Menez, Smith  
In Chief.

A Correct.

Q From 1959 to 1962, you  
studied theology in Toronto and Washington, D.C.

A That's correct.

Q In 1962, you obtained a  
Licence in Sacred Theology from St. Augustine's Seminary  
in Toronto.

A Correct.

Q And you were ordained then.

A True.

Q In 1970 you obtained a  
B.A. in Communications from Loyola University.

A Correct.

Q In Montreal. Since 1963,  
that is from '63 to '71, you engaged in development work  
in Brazil in various capacities concentrating on the  
Amazon region?

A That's true.

Q From 1969 to '71 you were  
Professor of Communications at the Catholic University  
of Sao Paulo and Collegio Santa Cruz in Brazil.

A That's true.

Q From 1971 to 1975 you were  
Director of Native People's Affairs for the Canadian  
Catholic Conference.

A That's true.

Q From 1972 to '74 you were  
also Director of the Latin America Department of the  
Canadian Catholic Conference.

A Correct.



Rolfe, Brownstone, Draimin,  
Clarke, Menez, Smith  
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1  
2 Q From 1974 to the present  
3 you held your present position.

4 A Correct.

5 Q You were also, for a  
6 period of time, from 1972 to '75 the Editor of "The  
7 Clearing House."

8 A Correct.

9 Q You remain a contributing  
10 editor of that journal.

11 A Correct.

12 Q You are also the author  
13 of several papers on development and native issues in  
14 Latin America.

15 A Correct.

16 Q You have field experience  
17 and study in the countries listed in the witness resume.

18 A That is correct.

19 (QUALIFICATIONS AND EVIDENCE OF T. CLARKE; W. SMITH,  
20 T. DRAIMIN, FR. LOU MENEZ MARKED AS EXHIBIT #574)

21 (QUALIFICATIONS AND EVIDENCE OF MEYER BROWNSTONE AND  
22 ROGER ROLFE MARKED AS EXHIBIT # 575)  
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30



Rolfe, Brownstone, Draimin  
Clarke, Menez, Smith  
in Chief

Q Well, I think we're  
ready to begin with the evidence, sir, and I'd like to  
call on Mr. Brownstone to begin.

WITNESS BROWNSTONE: Your  
honor, may I first say how pleased Mr. Rolfe and I are  
to be here to assist the Commission in its Inquiry, and  
if I might also say, without prejudice, how impressed  
we have been on the conduct of this Inquiry at some  
distance and we're delighted to be here to join in with  
it. I can assure you that our organization, Oxfam-Canada,  
is fully prepared to assist the Inquiry when it begins  
its tour of the south.

For Oxfam-Canada one of the  
most critical aspects of the proposed Mackenzie Valley  
Pipeline is its socio-economic impact on the north. The  
issues raised by this aspect --

THE COMMISSIONER: Excuse me.

A Sorry.

THE COMMISSIONER: If I can  
just find this.

MR. BELL: There's a separate  
brief issued under the name of:

"Meyer Brownstone and Roger Rolfe."

THE COMMISSIONER: I think maybe  
mine begins with Mr. Hill's.

MR. BELL: I think you have the  
wrong one then, sorry.

THE COMMISSIONER: Sorry, sir,  
go ahead.

A Would you like me to begin



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1 again, your honor?

2 THE COMMISSIONER: Yes, if you  
3 would.

4 A O.K. For Oxfam-Canada  
5 one of the most critical aspects of the proposed Macken-  
6 zie Valley Pipeline is its socio-economic impact on the  
7 north. The issues raised by this aspect of the Inquiry  
8 are vital to northerners. But as well they pose real  
9 development alternatives that are increasingly relevant  
10 to all Canadians.

11 Oxfam-Canada has been active  
12 during the past ten years working with people in the  
13 Third World through long-term development projects which  
14 have confronted some of the immediate injustices of  
15 poverty in their daily lives. Through this direct  
16 experience in the problems of development/underdevelopment  
17 over a number of years, a perspective for Oxfam-Canada  
18 has emerged which has shaped our goals and program in  
19 developing nations and in Canada. We are convinced that  
20 this experience is directly relevant to the broader  
21 issues now before the Inquiry. We welcome this opportunity  
22 to outline some of the dimensions of our experience in  
23 the Third World and to detail our work in Canada with the  
24 Indian Brotherhood of the Northwest Territories. They form  
25 the basis for the conclusions that we will attempt to draw  
26 for the Inquiry.

27 A more complete understanding  
28 of our perspectives on development and underdevelopment  
29 has emerged in Oxfam-Canada only after several years of  
30 intensive review of our practical experience in inter-



Rolle, ~~Brownstone~~, Dramin,  
Clarke, Menez, Smith  
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1 national relief work and long-term development projects.  
2 As an active participant in the international Oxfam  
3 movement, we have had available to us a wealth of inter-  
4 national experience gained over three decades. Our  
5 project work in the Third World has been supported by the  
6 expertise of a network of field staff deployed by Oxfam  
7 and located in various countries and regions of Latin  
8 America, Asia and Africa. The field workers have had a  
9 direct insight into the particular dimensions of poverty  
10 and underdevelopment in particular regions. Their  
11 reports as well as Oxfam-Canada's communications with the  
12 project holders themselves form the foundations for our  
13 understanding of the value and the limitations of our work  
14 in seeking to challenge the structures which sustain  
15 underdevelopment.

16 Since its emergence after the  
17 Second World War, Oxfam has undergone a gradual tran-  
18 sition from an agency concerned with charity-relief  
19 work to one whose main concern is development. This  
20 transition has been reflected in Oxfam-Canada since  
21 its founding in 1965. While in 1966 almost all disburse-  
22 ments were made for charity relief work to provide food  
23 and immediate support for the most seriously affected  
24 victims of poverty in the Third World, by 1970 only 36%  
25 of our funds were allocated for these purposes. (This  
26 still represents a significant allocation of funds  
27 since our income has increased sixfold in the same  
28 period). Our major allocations by this time were for  
29 long-term development projects with one or more agri-  
30 cultural, education, family planning, health and nutrition



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1 components. As such, this change in approach from  
2 treating the symptoms of poverty to a conscious attempt  
3 to alter the conditions which produce malnutrition,  
4 hunger and disease in the Third World broadened our  
5 awareness of the social and political implications of  
6 all aspects of our work. Thus while we continued to  
7 provide short-term relief support in response to situa-  
8 tions of immediate disaster and emergencies, we have  
9 made an attempt to allocate this relief in a manner that  
10 increases the potential for long-term development.

11 Our Policy Paper on Inter-  
12 national Development in 1972 challenges the more  
13 traditional understanding of this term "development"  
14 and poses an alternative conception. I'm quoting from  
15 that document now, your honor:

16 "...development amounts to a great deal more  
17 than increases in gross domestic product,  
18 per capita incomes, per capital railway mileage,  
19 etc., and development cannot be left solely in the  
20 hands of the economists. The overall aim of  
21 development is to bring into being a society  
22 in which the available resources are shared by  
23 the people on an equitable basis. There are  
24 two weaknesses in this definition.

25 Firstly, it is not clear who is to be responsible  
26 for bringing about these changes in the society  
27 and on this matter there should be no doubt.

28 Secondly, to the materialistically minded west-  
29 erner, the term 'resource' too often suggests  
30 only a material and static thing, whereas the



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1 term encompasses people in all their variety  
2 and especially their culture."

3 In the projects we support,  
4 Oxfam-Canada has worked with the poorest sections of the  
5 populations in both rural and urban areas in their  
6 efforts to realize their aspirations for social justice  
7 and greater equality within their own societies. The  
8 notion of social justice must be tempered with the  
9 recognition that one of the central causes of under-  
10 development is the existence of <sup>both</sup> indigenous and external  
11 elites who use their economic and political power to  
12 impose "development priorities" which strengthen their  
13 own positions within a developing society. In other  
14 words, the poorest sections at the socio-economic  
15 margin who daily face the conditions of material poverty  
16 also lack the political power to realize their interests  
17 in a more just and equitable social order. It is for this  
18 reason that Oxfam seeks to support indigenously determin-  
19 ed self-help projects that on a long-term basis confront  
20 the most immediate conditions of poverty amongst the  
21 marginalized and exploited population. By creating the  
22 conditions for relative self-reliance, such projects  
23 may also develop self-confidence and awareness of the  
24 oppressed to assert their long-term interests in the  
25 national political, economic and social spheres. Along  
26 with this understanding comes a realization that any  
27 nationwide amelioration of conditions of poverty requires  
28 a thorough going change in social and economic structures  
29 that sustain dependency and exploitation.

30 Development projects do not



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1 in themselves generate such structural transformation.  
2 What they can do is create awareness of their necessity  
3 and offer a model for real alternatives. We shall show  
4 later that this perspective is directly relevant to our  
5 involvement in the Mackenzie Valley. But first, however,  
6 we would like to establish its meaning for our work in  
7 the Third World.  
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Our experience in Bangladesh and India, long an area of concentration for OXFAM, reflects both the importance and the limitations of long-term development projects. Since its initial involvement in relief and rehabilitation following the formation of Bangladesh, OXFAM has worked closely with the Bangladesh Rural Advancement Committee. It has developed programs to promote functional literacy, provide seeds and agricultural implements, assist the formation of cooperative societies and establish field camps to provide medical services.

Important as these programs are for those deriving real benefit from them, we have become increasingly aware of the exploitative and corrupt political context in which they operate. While smuggling of the major export crop, jute, occurs on a massive scale, commodity prices in general rose by 400 percent in 1974 and rice, which is a basic staple, by 240 percent. Nearly half of the rural population are landless or own small uneconomic plots. Unable to maintain a subsistence level of income, the poorer peasant is bound to the wealthy peasant and money-lender to increasing debt in order to purchase the grain he is unable to grow for himself.

This sector of the rural population is the first to be affected by any threat of drought or famine because it is unable to afford the food available on the market. At the same time, the control of land, agricultural labor and rural credit by the elite within Bangladesh imposes social, economic and political



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1 obstacles for a program to redistribute land on a  
2 cooperative basis. Without redistribution of land the  
3 landless and poor can have no secure and independent  
4 economic base to sustain them. With control over land  
5 and power resting in the hands of others the real needs  
6 of those most oppressed, for adequate shelter, nutrition,  
7 health and education, can never be met.

8  
9 In India, we were confronted  
10 by similar if not more complex socio-economic and  
11 political circumstances. Here our support for FREA  
12 which is the Front for Rapid Economic Advancement of  
13 India, involves OXFAM in a number of programs of social  
14 and economic change. These emphasize the development  
15 of local leadership, aim to foster a sense of social  
16 consciousness, and evolve a framework within which the  
17 participants can come to understand their immediate  
18 circumstances.

19  
20 In one community, they have  
21 organized a cooperative consumer shop which forced  
22 down village prices by 20 percent and broke the image  
23 of the village notable as an 'all powerful man.' In  
24 another community, where landlords controlled all the  
25 land and exploited poor farmers and landless labourers,  
26 the latter were organized to demand redistribution of  
27 government land. Successfully obtaining plots, they  
28 have cleared their land, collectively irrigated it, and  
29 established a cooperative marketing scheme.

30 At the same time FREA realistically  
31 points out in their reports that these projects are  
32 strongly resisted by village landlords who feel threatened



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1 by the relative economic self-sufficiency achieved by  
2 those involved. They note that the landlords "fear that  
3 through providing regular employment to people, these  
4 projects would reduce the pressure on land and would  
5 cause a demand for higher wages, making the landless  
6 independent of the landlords to a certain extent."

7 This experience then has  
8 compelled OXFAM Canada to note the complexities of  
9 exploitative and dependent relationships between social  
10 groups which often are the underlying foundation for  
11 the extremities of poverty and affluence in many Third  
12 World nations. Our support for those seeking national  
13 self-determination and social justice in Southern  
14 Africa in the context of former Portuguese colonial  
15 regimes and continued racial oppression in Rhodesia,  
16 Namibia and South Africa has focused our attention upon  
17 the brutal realities of externally oriented development  
18 priorities that sustain dependency and exploitation at  
19 a national level.

20 The organization of Mozambique's  
21 economy as a consequence of 400 years of Portuguese  
22 colonialism was characterized by the plantation pro-  
23 duction of export crops and forest cultivation of  
24 coffee by African peasants. During the 1960's this  
25 externally oriented development involved the construction  
26 of a huge hydro-electric project at Cabora Bassa, utilizing  
27 South African and British capital to serve the power  
28 needs of South Africa and mineral exploitation in  
29 Mozambique. Such development, suiting the needs and  
30 interests of metropolitan industrial economies, meant



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1 for Africans a brutal system of contract labor that  
2 compelled them to work at less than subsistence wages on  
3 private estates and Portuguese projects. The European  
4 monopoly of the commercial agricultural sector and the  
5 forced cultivation of export crops for minimal returns  
6 reduced the vast majority of African peasants to a bare  
7 subsistence level.

8 The long struggle waged by  
9 FRELIMO against the Portuguese regime has succeeded in  
10 creating an independent and free Mozambique. The roots  
11 of that struggle amongst the masses of rural peasants  
12 has meant for Mozambique the elaboration of development  
13 priorities that serve the real needs of the vast majority  
14 of the population. OXFAM-Canada offered assistance to  
15 FRELIMO for the development of their economy in the  
16 liberated zones during the war against the Portuguese.

17 Now as the government of Mozambi-  
18 que, FRELIMO sustains these development priorities by  
19 emphasizing the importance of primary education, directly  
20 related to the movement's experience in creating a free  
21 Mozambique and to the practical needs of rural agricul-  
22 tural development on a cooperative basis.

23 This contrasts Portuguese  
24 colonial education which is oriented towards integrating  
25 the African into a Portuguese determined civilization.  
26 In encouraging cooperative agricultural development at the  
27 village level, FRELIMO has also emphasized the produc-  
28 tion of food crops for the subsistence of the village  
29 as a whole, as well as these and commercial crops for  
30 exchange for necessary agricultural implements, seeds,



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1 textiles and so on. In her report to OXFAM in 1973,  
2 Janet Mondlane of the Mozambique Institute noted that  
3 "The development of production and commerce in  
4 Mozambique is essential to the successful growth  
5 of a new society, oriented by our determination  
6 to free our country from exploitation both internal  
7 and external."

8 Based in Tanzania, the  
9 Mozambique Institute organized and supported the  
10 development of agricultural production, health and  
11 education in the liberated zones of Mozambique during  
12 the war with the Portuguese.

13 But Portuguese colonialism has  
14 left a legacy. The promotion of migrant labor for  
15 South African mines and the development of a capital  
16 intensive hydro-electric project, though inappropriate  
17 to the most immediate needs of the Mozambican people,  
18 continues to influence the course of the Mozambican  
19 development today. OXFAM-Canada has renewed its  
20 commitment both in Mozambique and now Angola to support  
21 the continuous struggle to challenge the patterns of  
22 exploitative and externally imposed development. We  
23 hope in this way to assist in the transformation of a  
24 Mozambique by its people from a dependent colonial  
25 country, its people exploited by both national and  
26 international interests, to a truly independent nation  
27 utilizing its own resources in a context of self-  
28 reliance and self-determination.

29 This change represents a real challenge  
30 and alternative to the massive poverty and inequality that  
Mozambicans have known for several hundred years.



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1                   The transformation in the nature  
2 and understanding of our work overseas has also been  
3 reflected in the development of our program in Canada.  
4 This program increasingly has come to recognize the  
5 importance of education and political action work.  
6 Public education programs have been developed in the  
7 three regions of Oxfam-Canada in order to broaden the  
8 awareness of Canadians of the dimensions and causes of  
9 poverty, malnutrition and illiteracy in the Third  
10 World. But equally important, the thrust of these  
11 programs has also emphasized the importance of effecting  
12 changes in Canadian Government policy towards the Third  
13 World. Ultimately, such policy changes in Canada's  
14 economic relations with the developing nations can  
15 effect a more significant challenge to the structures that  
16 sustain underdevelopment than relief aid or welfare  
17 oriented development assistance.

18                   Oxfam's education and political  
19 action programs have generated a response among Canad-  
20 ians not only because of a humanitarian concern but also  
21 because we feel Canadians share a common ground with those  
22 seeking social justice in the Third World. Just as  
23 powerful external economic elites have distorted  
24 development in the Third World, these same elites in  
25 the industrial nations have distorted their own economies  
26 most prominently through the agencies of global corpora-  
27 tions supported by large governments. As a resource  
28 hinterland for metropolitan industrial nations, this  
29 distortion has also occurred in Canada. The most obvious  
30 victims of this process of development have been Canada's



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1 native people as well as the urban and rural poor.  
2 Their situation is characterized by those same conditions  
3 of underdevelopment that we have experienced in the  
4 Third World; and it is for this reason that material and  
5 other support for these groups are consistent with Ox-  
6 fam's aims and objectives.

7 Oxfam-Canada's involvement with  
8 Canadian native people goes back to 1970, the year in  
9 which we funded Project Talking Bird . Oxfam paid for the  
10 purchase of a small airplane operated under the direction  
11 of the Canadian Association in Support of Native Peoples.  
12 We also funded some running costs. This plane was used  
13 to do initial organization work in both Western and  
14 Eastern Arctic communities, especially among the Inuit.

15 The idea was to put isolated  
16 native communities in touch with one another. They would  
17 then discover that the concerns they had about how  
18 modernization was coming to the north, or what place  
19 they would have in the future northern society, were  
20 concerns that other communities shared. With this know-  
21 ledge and communication, native people could begin to  
22 assert their right to participate in making decisions  
23 which will affect their lives and the lives of their  
24 children.

25 Project Talking Bird was  
26 especially useful in helping to build local affiliates  
27 of the Inuit Tapirisat of Canada in the Eastern Arctic.

28 This initial involvement with  
29 Canada's native people in 1970 was motivated by a  
30 genuine humanitarian response to their plight, by a



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1 concern for their physical and psychological oppression.  
2 But this concern was sharpened in the years following  
3 in the awareness that the causes of poverty, hunger,  
4 malnutrition and so on among native people in Canada,  
5 were remarkably similar to the causes underlying under-  
6 development in the Third World.

7 Just as the societies and  
8 economies of indigenous peoples in the Third World had  
9 been disrupted, distorted and weakened during the  
10 periods of conquest, colonialism and neo-colonialism,  
11 by the intervention of the industrial countries seeking  
12 resources for their own interests, so too in Canada the  
13 appropriation of land resources by companies, governments  
14 and individuals led to the distortion, disruption and  
15 eventual destruction of the indigenous economies and  
16 societies of Canada's native people. They were pushed  
17 aside in the process of nation-building and profit-  
18 building, sometimes exterminated, sometimes conquered,  
19 more often forced onto reserves and put under the  
20 charge of the Federal Government. The colonization of  
21 the Third World has had its parallel in this country.  
22 What is most unsettling, however, is that this internal  
23 colonialism directed at the native people of Canada  
24 has not ended, even in the present day.

25 It is in this context that  
26 Oxfam-Canada saw that its experience and policies in  
27 encouraging development among communities in the Third  
28 World were directly relevant to a similar challenge  
29 among Canadian native people. In the past two years and  
30 in response to requests from native organizations, Oxfam



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1 has again been able to give practical expression to its  
2 long-standing concern for native development in Canada,  
3 through financial and other support for native peoples'  
4 projects.

5 In 1974 the National Indian  
6 Brotherhood sought Oxfam's help to prepare for an  
7 International Conference of Aboriginal Peoples. The  
8 meeting would bring together Lapps, from Scandinavia,  
9 Aborigines from Australia, Indians from North and  
10 South America, Inuit from the Arctic, Bushmen from  
11 Africa, and so on. It would bring together representa-  
12 tives from all these groups to exchange information  
13 and strategies about their common problems as small  
14 peoples trying to survive and develop surrounded by a  
15 dominant society of invaders.

16 In the same year, the Indian  
17 Brotherhood of the Northwest Territories also approached  
18 Oxfam. They were determined to seek a land settlement  
19 in the Northwest Territories different from all previous  
20 native land settlements. They sought a continuing role  
21 in both the planning and the benefits of developing their  
22 ancient northern homeland. The mechanism for  
23 ensuring themselves of a place in the future economic,  
24 social and political life of Canada's north would be  
25 continued ownership of their land. All previous Canadian  
26 treaties with native people up to and including the James  
27 Bay Settlement, have been instruments for extinguishing  
28 aboriginal rights to the land. The result of  
29 this extinguishment was that the dominant non-native  
30 Canadian society pushed ahead with its own kind of



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1 development while native peoples became outcasts and pen-  
2 sioners.

3 Oxfam-Canada was attracted  
4 by several aspects of this proposal put forward by the  
5 Dene people. First it was a grass roots movement -- the  
6 impetus and demand for this kind of a land settlement  
7 came from the communities. The near universal support  
8 for such an approach is shown by the response of hundreds  
9 of individuals to this Inquiry when it visits native  
10 communities.

11 Secondly, the Dene have made  
12 a significant break-through in uniting the status,  
13 non-status and Metis people of the Northwest Territories.  
14 In most parts of Canada treaty Indians keep themselves  
15 separated from non-status and Metis people. This division  
16 is promoted and encouraged by the policy of our Federal  
17 Government which refuses to deal with these groups as  
18 one. In the Northwest Territories the Dene made it clear  
19 from the start that they sought a settlement for all  
20 people of Indian ancestry. So strongly did they make  
21 this point that the Federal Government agreed for the first  
22 time in modern Canadian history to negotiate with both  
23 groups together.

24 Thirdly and lastly, Oxfam-Canada  
25 was asked to support only those segments of the Indian  
26 Brotherhood's work which the Federal Government had  
27 refused to fund.

28 In June of 1975 Oxfam agreed  
29 to a project grant of \$140,000 over a two-year period  
to fund economic studies related to a land claim



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1 settlement in the Northwest Territories. Part of that  
2 grant will be used to pay for independent analysis of  
3 the economic potential of land under claim.

4 The largest portion will fund  
5 a series of workshops in which the Dene will develop  
6 their own concepts of community-based development.  
7 By deciding what kind of development they want, they  
8 will be able to work out the specific nature of the  
9 land settlement that would be needed to make it  
10 possible. In this way they will be sure that development  
11 alternatives will be compatible with their own life-  
12 style and needs.

13 It is our understanding that  
14 this process, which is a critical process, is now well  
15 under way within the Brotherhood. But a process by  
16 which people themselves endeavor to take control over  
17 their own lives and future is necessarily a time-consuming  
18 one. To deny the Dene the time they need is to  
19 risk serious damage to their future. The Dene position  
20 of "no pipeline before a land settlement" is surely a  
21 minimal demand which must be respected.

22 Consistent with Oxfam-Canada's  
23 desire to develop an educational program around its  
24 its major projects, we appointed a full-time staff  
25 member in July of 1975 to act as a liaison person  
26 between Oxfam and the Indian Brotherhood of the  
27 Northwest Territories. The responsibility of the liaison  
28 officer has been to examine the situation in the  
29 Mackenzie Valley through direct experience in the field  
30 and to translate that understanding into an educational



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1 program for southern Canadians in the Province of  
2 Ontario. The program began in October, 1975 and continues  
3 today.

4 Our involvement in the  
5 Mackenzie Valley since 1974 has given Oxfam-Canada the  
6 opportunity to analyze the dynamics of development in  
7 the region and to articulate with the benefit of our  
8 experience elsewhere, what conditions are essential if  
9 social equality and justice are to be guaranteed to the  
10 Dene of the north. An independent economic base suited  
11 to the present capacities of the native people of the  
12 Mackenzie Valley and sufficient to provide for both their  
13 present and their future development is one condition  
14 that is absolutely necessary. The second is a measure of  
15 self-determination that will allow the Dene to determine  
16 their own development priorities and that will at the  
17 same time secure their direct participation in other  
18 development decisions within the region.

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Land and self-determination

have existed for the Dene throughout most of their history and even in large measure in the present day. They continue to have a land base and the control they have had de facto over this land has allowed them to maintain their economy and the society which is built on it. Government policy and corporate activity has often weakened the integrity of their way of life but the fact that this externally initiated development has been in the past sporadic, rather than comprehensive has given the Dene the space to keep their society together and to avoid the symptoms of social disintegration that have been the fate of native people in southern Canada.

Granted industrial training and employment programs and government education systems, the Dene have been marginalized from the development process in the Mackenzie Valley. It has been their fortune that thus far, this process has not engulfed the north, that industry and government have ignored this last frontier sufficiently to leave a margin, enough for the Dene to sustain themselves on their own resources.

The future however holds a different prospect, for the conquest of the last frontier has begun. Development of northern energy reserves and exploitation of northern mineral resources threatens to erode the margin that has underwritten the Dene survival up till now. That erosion comes in the form of direct destruction of their economic base as the wildlife, the fish, the terrain, the air, in short, the



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1 renewable resources on which they depend suffer under  
2 the environmental damage of development projects. But  
3 it also comes, and perhaps more significantly, in the  
4 form of social impacts as diverse as alcoholism,  
5 prostitution and short-term employment that draws people  
6 away from the land and away from their communities,  
7 only to throw them back there when employment opportuni-  
8 ties dry up.

9 Government policy as it relates  
10 to northern native people gives no hope, no basis for  
11 hope that this process will be reversed. The mandate  
12 of the Department of Indian and Northern Affairs to  
13 extinguish the Dene's aboriginal title in exchange for  
14 reserves and monetary compensation does not offer an  
15 economic base capable of supporting Dene society. The  
16 protected lands will be too small, usufructuary rights  
17 on unprotected lands will lose their value as develop-  
18 ment decimates renewable resources and monetary compensa-  
19 tion insufficient to begin with, will not come within  
20 an integrated development plan worked out by the Dene  
21 necessary to maximize its usefulness.

22 Moreover, the chronic failure  
23 of government programs directed at assimilating native  
24 people within the dominant non-native society closes  
25 off what might be an alternative source for the satis-  
26 faction of the material, if not the social and cultural  
27 needs of the Dene. The future of the Dene under a  
28 land settlement as it is now being advanced by the  
29 Federal Government will be little different from what is  
30 now the present day reality for most native people in



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southern Canada -- unproductive reserves, emigration to the metropolitan centers; in both places welfare, alcoholism, violence, suicide, demoralization. The injustice of this situation is inescapable and the need for an alternative is clear.

A land settlement that recognizes the aboriginal title of the Dene to their traditional lands and that invests them with the power to chart their own course for the future is an alternative consistent with the goals of social equality and justice that form the foundation of Oxfam-Canada's work. This demand by the Dene to control their own lives and to chart their own future course constitutes the essence of the Dene Declaration we believe, and the reason why Oxfam-Canada strongly supports it. The land will provide the material base and the self-determination will provide the institutional foundation for the Dene to meet their development needs. Without the latter, power over the lives of the Dene will continue to rest in hands of Canadian governments which have consistently shown themselves whether through ignorance or insensitivity to be incapable of wielding power beneficially.

Political rights that give the Dene control over development on an on-going basis in the Mackenzie Valley must be fundamental to any just land settlement. Without ownership of the land and of the rights to its renewable and non-renewable resources, the self-determination of the Dene will lack an economic base and will be vacuous. Both land and self-determination are important; both are necessary.



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The alternatives are clear.

This is not a debate about legalities, but about social justice. The history of colonialism and exploitation whose consequences are so evident in the Third World and regrettably are also evident in the treatment of native people in Canada must not be repeated in the Mackenzie Valley. For what this Inquiry is considering is not only the right to cultural survival of the Dene, but their material and social survival as well. As basic human rights, these must be guaranteed to them.

Thank you, your honour.

THE COMMISSIONER: Thank you  
Mr. Brownstone.

MR. BELL: I'd now like to call  
on Mr. Clarke to read in the evidence of his group.

WITNESS CLARKE: Mr. Commissioner.  
We refer to the document, "Colonial Patterns of Resource Development", a case study of the native people's struggle within the Amazon Basin of Brazil and its implications for the Northwest Territories.

Just a brief comment, Mr. Commissioner; we too are very pleased to be here to assist in this Inquiry. As you know, the churches have followed with great interest the work that you've been doing in the north and we look forward to your appearance in the south as well. Thank you.

We are grateful for this opportunity to present our concerns about the future course of resource development in the Canadian north before what may well become the most significant public



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inquiry in the history of this nation.

As you know, the church has had an historical relationship with the native people in the Northwest Territories. We readily acknowledge the church in Canada has participated in the injustices incurred by native peoples in the past. We look to the past in order that we might act more responsibly in the present, and today the projected resource development for the Northwest Territories raises profound questions of justice and poses a serious challenge for the whole church in Canada.

As a consequence, the church has initiated research, education and action programs which are designed to address the ethical issues of northern development today. The church has also had the concern with the corporate responsibility in our society today. An inter-church Task Force on Churches and Corporate Responsibility has been established to enable the church to investigate the behavior of corporations and call them to account on the question of public and social responsibility. In a brief to the Royal Commission on Corporate Concentration to be submitted on Wednesday of this week, the Task Force will present a series of case studies to advance the argument that corporations can no longer ignore public and social responsibilities. In the same context, the churches have initiated a Corporate Action Research Project to prepare the background studies on corporate resource development in the Amazon and the north. It is on the basis of these studies that this presentation is made.



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It is our understanding that the purpose of this particular phase of your Inquiry is to assess the social impact, particularly on the lives of native peoples, of building a pipeline down the Mackenzie Valley. In this context, we contend that it is important to examine the struggles of native people elsewhere in the world who have encountered similar patterns of resource development. Indeed, the social impact of development plans for the Northwest Territories cannot properly be understood apart from such an examination for two fundamental reasons.

Firstly, native people everywhere have a special relationship to the land which is often neither understood nor tolerated by the larger societies in which they live. The tendency to look at each group in isolation denies us the insights we can get from looking at the common experience of native peoples throughout the world.

Secondly, the land occupied and used by native people is the object of increasing interest by transnational corporations who, acting with the support of national governments, are today the dominant forces in resource development.

We have chosen here to look at the struggle of native people in the Amazon region of Brazil and for the past decade, transnational corporations in cooperation with the Government of Brazil and other governments, including Canada's government, have taken control of the Amazon's rich resource base. A variety of mining, agricultural, forestry,



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and energy projects have been initiated along with the construction of highways, railways and seaports. Native people have had no role in decisions about the use of their lands and their development. In effect, the colonial pattern of resource development has emerged in the Amazon which has had tragic consequences for the native people who have inhabited this region of the world for centuries.

Some may feel our choice is inappropriate. Brazil is a peculiarly harsh example in respect to its treatment of native people. Canada treats its native people distinctly less harshly and the difference in degree at some point becomes a difference in kind. This difference however, should not lead us to conclude that examining the structure and pattern of resource development in the Amazon is irrelevant to understanding resource development plans for the north, including the proposed gas pipeline.



1     There are some important parallels between resource  
2     development in the Amazon region and the Northwest  
3     Territories which, we believe, indicate that the Amazon  
4     case is not an isolated experience but has implications  
5     for resource development here. As we will show presently,  
6     some of the same transnational corporations are involved  
7     in both regions. The Canadian Government also plays a  
8     role in both regions -- a major one, of course, here  
9     in the north, and a minor, but nevertheless most  
10    disturbing one in Brazil.

11                     There is a final and compelling  
12    reason for insisting on the relevance of our case study  
13    of the Amazon for the north. While the situation in Brazil  
14    is presently much worse than in Canada, native people  
15    here have no guarantee that their situation will not  
16    worsen and dramatically so. Threats that a pipeline  
17    will be built regardless of whether or not there is a land  
18    settlement acceptable to the native people would, if  
19    carried out, constitute coercion of a nature that  
20    would move the north tragically closer to the present  
21    realities of Brazil. For what we see emerging in the  
22    Northwest Territories is a colonial pattern where native  
23    peoples have no effective control over future economic  
24    development of resources on their lands.

25                     In presenting this study,  
26    Mr. Commissioner, we are acting in solidarity with our  
27    sister church in Brazil. For the Brazilian Church has  
28    become a significant opposition to the relentless exploi-  
29    tation of Indian people in the Amazon. In this particu-  
30    lar moment in history, we find ourselves acting in the



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tradition of the prophets by engaging in the struggle of native peoples for justice in both the Northwest Territories and the Amazon.

Now let us first consider the people and the resources of the Amazon. The Amazon region of Brazil constitutes an enormous land mass of 1.5 million square miles stretching across the entire north and north-west half of the country. For several thousand years, the Amazon Basin and its surrounding regions have been the homeland for Indian people. In recent years the Amazon region has become recognized as one of the world's last untapped storehouses of mineral wealth, agricultural lands, and forests.

Through the centuries, the Indian people of the Amazon have developed a collective culture and self-sufficient economy. When the Europeans arrived in the 15th century, they found a dense and lively Indian population in the Amazon region. There is no certainty about the size of the aboriginal populations prior to the arrival of the Europeans, but historians calculate that the Indian people may have numbered between one and 5,000,000. By 1900, intervening atrocities and natural disasters had drastically reduced the Indian population to less than a million. By 1940 the estimate was 500,000.

Since time beyond memory, the Indian people of the Amazon have had a unique relationship with the lands they have inhabited. The land itself has been intrinsic to the native way of life in the



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Amazon and the native culture has been developed in  
harmony with the environment. For the Brazilian Indian,  
therefore, as with aboriginal people elsewhere, the  
relationship with the land is not simply economic but  
is necessary to maintain the self-sufficient,  
collective way of life, and as such is considered inalien-  
able from them as a people. To separate the Amazon  
Indians from their land is to deny their being, to des-  
troy their way of life, and to disrupt the social,  
cultural, spiritual, economic and political relationships  
of their society. These are the conclusions of an  
historic meeting of native peoples, the First Indian  
Congress of the Southern Hemisphere held at the Catholic  
University of Asuncian, Paraguay, in October, 1974.

In the words of Tururin, chief  
of the Pataxo Nation in the Amazonia:

"We Indians are like a plant, which suffers  
seriously -- or dies -- when moved from its  
place. We cannot agree to leave here because  
we were here on this land long years before  
the reservation existed. For good or ill, it is  
ours ; it is where we were born and grew up and  
where our fathers and forefathers died and are  
buried."

The Indians of the Amazon  
today claim the lands they have occupied for centuries  
in Amazonia to be their own. For these aboriginal peoples  
the concept of land ownership is communal. The land  
exists to provide for the needs of people rather than the  
maximization of profits. The sole purpose of social



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1 organization itself is to guarantee the survival and  
2 rights of all people, rather than a few, by creating con-  
3 ditions for sharing power equally in the community and  
4 living in harmony with nature and its phenomena.

5 For the past decade, the  
6 Indian people and their culture have been seriously  
7 threatened by the onslaught of resource development in  
8 the Amazon. The vast mineral, energy, agricultural and  
9 timber resources of the Amazon are being exploited for the  
10 markets of the world. Indeed, the potential mineral  
11 wealth of the Amazon is such that it is being heralded  
12 in global business circles as the "mineral province of  
13 the seventies". ("It was Canada in the '50s; Australia  
14 in the '60s, and I'm totally convinced it will be  
15 Brazil in the '70s," said a mining consultant by the  
16 name of Patrick J. Delaney in "Engineering & Mining  
17 Journal" of February, 1972).

18 The Amazon Basin contains the  
19 world's largest reserves of iron ore, enormous bauxite  
20 deposits (that, according to "Metals Week" December  
21 16, 1974, will allow the country to become one of the  
22 world's five largest producers within ten years, of  
23 bauxite), the world's largest tin reserves and  
24 enough manganese to become the world's second biggest  
25 exporter. Other minerals found in the Amazon include  
26 beryl, niobium, nickel, colobium, tantalum, cobalt,  
27 tungsten, and copper. The "Los Angeles Times" for  
28 September 26, 1975 reported good potential for chrome,  
29 phosphates, potassium, gold, diamonds and other gems.  
30 In addition, the region may hold potential for hydro-



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power  
10 electric projects, and substantial oil reserves. Oil  
11 was discovered at various sites, not only a good  
12 quality but also in great quantity, especially in the  
13 so-called Campos (offshore at the mouth of the Amazon),  
14 an area that is already being estimated as a reserve of  
15 approximately 800 million barrels. The Amazon also  
16 represents one of the largest forests in the world. Finally,  
17 vast tracts of land in the Amazon are being  
18 cleared primarily for cattle-raising.

19 Prior to 1964, there had  
20 been very little initiative taken in exploiting the re-  
21 sources of the Amazon. Until recently, there were a  
22 number of reasons for this resource base remaining  
23 untapped for large-scale economic exploitation. The  
24 virtual physical inaccessability of the Amazon region  
25 has been perhaps the primary deterrent in the past.  
26 There was also a lack of demand, both internally and  
27 externally, for Amazon's resources. The lack of strong  
28 state support and incentives was reflected in an economic  
29 nationalism which all but precluded the participation  
30 of foreign mining companies in the nation's mineral  
development because of a restrictive mining code. In  
this code subsoil rights were classified as being in  
the public domain and exploration and mining rights  
could only be granted to the Brazilian nationals.  
Finally, no geological mapping had been made of the  
Amazon region in order to uncover the sites that  
contained the mineral resources.

31 In 1964, a military coup  
32 affected a number of these factors. The rapid escalation



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of mineral resource development gained momentum particularly because of the military government's new mining code promulgated in 1967. The new code stipulated that the government may develop only existing mining companies and can initiate new mining ventures only if no private companies have expressed interest in them. In fact, it favored private foreign-based corporations to exploit the new mining ventures rather than take the initiative itself.

The impetus for this growth was given through conducting a complete geological survey of the Amazon and introducing fiscal incentives and tax exemptions for foreign investments in mining ventures. A state agency, the Cia de Pesquisa de Recursos Minerais was set up in 1970 as a service company, an exploration company, and as a finance company, such that rather than develop a mine itself the CPRM would "work with and for private companies" according to one of its directors.

Today the plan for the Amazon is on a massive scale which includes mineral resource extraction and development, timber extraction and forest products complexes, agricultural enterprises principally for cattle raising, and development of an infrastructure exemplified by the trans-Amazonic highway system.

The biggest boom in Brazil today is occurring in the mining sector. After successfully achieving a target of doubling the value of the country's mineral output between 1969 and 1973, the new



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development plans called for a quadrupling of output again between 1975 and 1980. Exploration budgets, which were almost non-existent a decade ago, will have reached an annual rate of \$150 million by the end of 1976, more than the combined exploration budgets of Canada and Australia. Mineral claims jumped from an annual rate of 2,000 in 1968 to over 20,000 in 1975. Moreover, it is thought that even all this present activity is just skimming the surface of what appears to be the most important new basin of mineral wealth for the western industrialized nations.

Now if we could take a look or consider the corporate takeover of the Amazon. In section, the previous reference has been made to the resources of the Amazon and the changing conditions which make their extraction possible. Over the past decade an increasing number of transnational corporations, often participating in joint ventures, have played a decisive role in resource development projects within the Amazon region. Canadian-based transnationals will be discussed in a later section.



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The construction of the Amazon road system which includes the 3,100 mile

Trans- Amazon highway from northeastern Brazil to the Peruvian front here, the Belem-Brazilia Highway, running north to south on the eastern edge of the Amazon, the Santarem-Cuiaba Highway running north to south through the west-central Brazil, the Northern Perimeter Highway and the Porto Velho Road passing through Mato Grosso and Rondonia has involved several foreign surveying and equipment corporations. Earth Satellite Corporation, Litton Industries and Westinghouse Corporation all have contracts for Project Radam, a \$7million aerial photographic survey of the Amazon. Komatsu (Japan), Fiat of Italy, General Motors, the Caterpillar Brasil, J. I. Case, Clark Equipment, Eaton Corporation Wabco, Huber-Warco (U.S.) and others, have contracts totalling \$172 million for earth moving equipment.

United States Steel is involved in a joint venture, the Amazonas Mineracao for the production of iron-ore. Bethlehem Steel participates in a joint venture, Industrias E Comercio de Minerios, in manganese. Alcoa, Nippon Steel of Japan and the Kaiser Aluminum Company, National Bulk Carriers, Pechiney, Alusuisse, Rio Tinto Zinc and Hanna Mining are all involved in the bauxite field. Billiton, owned by the Royal Dutch Shell Company and W. R. Grace ( Rockefeller Molybdenum Corporation - Moreira Salles), Portland Cement and several others have participated in joint ventures regarding tin.

The development of agriculture,



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mostly cattle raising, involves National Bulk Carriers, owned by D. Keith Ludwig and Volkswagen Brasil, among others. In forestry, National Bulk Carriers is also involved.

Now, the transnational corporations operating in the Amazon function in response to the demands of a global market system. By securing control over land in the Amazon, these corporations gain access to important supplies of raw materials. Access to supplies, in turn, provides these corporations with the power to determine or influence world market conditions on particular commodities and control over land resources and markets, together guarantees rising profit margins for the transnationals.

The operations of the transnationals in the Amazon region have been facilitated by the government's overall development policy for Brazil, known as the Brazilian Model. A combination of state incentives, international aid, foreign investment and private financing characterizes this Brazilian Model. The state does not hide the fact that integrated and dependent capitalism has been chosen as the model for development in Brazil. Analyses of the Brazilian Model have been made by the Bishops of the Amazon and the Catholic Bishops of the north-east Brazil and the Center-West. All three conclude that the present government of Brazil has become the instrument of domination for foreign capitalists, aligned with the local elite. In effect, this means that national development becomes subordinated to and integrated with the interests of the



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transnational corporations. For example, Alcan exports all bauxite extracted from the Amazon overseas, including exports to its Canadian site in Kitimat, B.C.

In particular, the Brazilian government has facilitated the operations of the transnationals in the Amazon through an elaborate state program of investment incentives. Corporations have been given tax exemptions of up to 50 percent as well as tax exemptions on the importation of new capital goods and certain raw materials. In addition, an enormous amount of public funds have been spent on providing basic infrastructures such as highways, harbors and electric power. These facilities have been especially used by the transnational corporations in transporting raw materials for export to other countries. Their interests are in exporting Brazil's natural resources for a maximum profitable sale elsewhere.

At the same time, Brazil's policies on joint ventures have provided greater benefits and more effective control for the transnationals in the Amazon. The "Financial Times of London," September 23, 1975 points out:

"Besides avoiding potential political problems, foreign companies with minority shares in Brazilian-controlled projects have a greater access to government loans and grants, as well as having a better chance of winning government contracts because, for most purposes, a Brazilian company is defined as one with 51 percent or more Brazilian capital. As they frequently both control technology and have sufficient



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votes on the Board of Directors to veto any decisions they are firmly opposed to, the foreign companies exercise very great power in these joint ventures despite their formal status as minority shareholders."

Through this process, valuable mineral, timber and energy resources from the Amazon are extracted and exported to other countries through the global market system. As a consequence, the resources of the Amazon are not being developed to serve the needs of the vast majority of Brazilians, let alone the native people of the Amazon. This is the colonial pattern of development whereby powerful corporations have taken control of both the people and the resources of the Amazon.

Now, if we could look at the exploitation of the native peoples in the Amazon. In the past, periods of economic boom in the Amazon, for example, the production of rubber, have been accompanied by the extermination of Indian people on a large scale basis. During these times, it was possible to retreat into the remote areas of the Amazon where contact with non-Indians and the immediate threat was minimal. The situation now has radically changed. Due to the type and scale of resource development now underway in the Amazon, the Indian people can no longer escape the impact. In the words of the former president of the National Indian Agency known as FUNAI,:

"The Indian cannot be allowed to impede development."

This has been the policy of the Brazilian government in the Amazon Basin. For the



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transnational corporations and the Brazilian government, it has been necessary to remove native people from their traditional lands in order to proceed with resource development and in particular, the building of highways, mining industries and agricultural enterprises have resulted in the exploitation of native peoples and their culture.

First of all, highway construction. The construction of the TransAmazonic Road System provide the basic conditions for attracting foreign investment and resource development. The highway system was built to criss-cross Indian parks established -- which were established to give native populations a chance for survival, and the 17 reserves of the Amazon Basin. The construction of the highway has been damaging-- has had damaging effects on the lives of Indian people. According to the Director of the Xingu National Park for example, the construction of the BR 80 highway has brought "Alcoholism, prostitution, adventurers and those who destroy the environment."

It has uprooted the Txukarramae tribe which were formerly within the confines of the Xingu National Park. In addition, the introduction of new diseases during the construction phases of the highway has wiped out scores of Indian families.

The Brazilian government has utilized various tactics to free Indian lands for highway construction. Plans were introduced to resettle half a million people living along highway -- the highway routes. Laws were also passed giving the government the



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right to lands not occupied.

A new Brazilian Indian Statute was passed in December of 1973 which virtually gave the government a free hand with regards to Indian land, citing the national interest as its ultimate justification. Contrary to the wishes of Congress, former President Medici vetoed the section on the statute that would have protected native people by prohibiting the leasing of Indian land. Moreover, garimpeiros were hired to drive indigenous people from their lands and settlers were sent in to squat or colonize Indian territories. At the same time, the construction projects have severely damaged hunting and fishing practices for many Indian people. The damming of rivers and building of roads has altered the traditional patterns of animals and fish.



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## Secondly, Mining Industries.

In 1971, the Brazilian Government declared the State of Rondonia as a major region for the extraction of cassiterite or tin. No consideration was given to how this resource extraction could proceed on Indian land. Rather, it was simply assumed that the Indian people would have to be driven away and strategies were devised to remove or eliminate them. The government's construction of the Trans-Amazonic Highway and the new port at Porto Velho paved the way for the investment of several transnational corporations. As a result, four or five major operations control tin production in Rondonia today, including the Canadian-based corporation, Brascan whose subsidiary, Promisa, has controlling interest in Mineracao Jacunda.

The Cintas Largas and Surui Indians, who for centuries had lived in relative isolation at the headwaters of the Aripuana River in Rondonia, were suddenly faced with the possibility of extinction. In 1971 the two tribes agreed to resettle in Aripuana Park where they were assured of government protection. Several months later, the government began selling parcels of land in the park to settlers. Several transnational corporations were granted permission to continue exploration on park land, and the highway was extended through the park despite Indian protests. The final blow was dealt in 1973 when it was announced that the park would be reduced to one-third its original size. Ten mining companies had received subsoil rights by the Brazilian Government in the newly confiscated area.



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One of these was Billiton, a subsidiary of Royal Dutch Shell; its Canadian subsidiary, Shell Canada, has extensive mining claims here in the Nahanni and is a member of the Arctic Gas Consortium.

In the upper Amazon territory of Roraima, exploration for uranium has severely affected the Yanomami nation. The governor of the territory stated:

"I am of the opinion that an area as rich as this -- with gold, diamonds and uranium -- is not able to afford the luxury of conserving a half a dozen Indian tribes who are holding back development."

Thirdly, we look at Agricultural Enterprises. The Brazilian Government has also encouraged the formation of large agricultural business in the Indian territories of the Amazon. Government subsidies have been provided to help clear the land, construct storage facilities, and even harvest the crops. A major example is the Swift-Armour-King Ranch, a 18,000 acre cattle ranch in the Paragonimas. In 1971, Deltec International, through its subsidiary, Swift do Brasil, made a bid to purchase the necessary acreage. The deal, however, became complicated by the fact that the lands had been designated as a reservation for the Kaapore and Tembe Indian tribes. In 1972, the World Council of Churches brought attention to the fact that the King Ranch was sitting on the lands of the Tempe and Urubu-Kaapore Indians.

The Brazilian Government's Minister of the Interior declared in 1973 that:



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1 "the development of Amazonia will not stop  
4 because of the Indians."

5 It was argued that Brazil needed large ranches in order  
6 to raise its levels of beef exports. In violation of  
7 national law, the property was promptly switched from  
8 federal to state jurisdiction in order to complete  
9 the transaction. Little or no consideration was given  
10 to how the Indian people were to survive without their  
11 lands. In 1972, Brascan, in conjunction with the CAEMI  
group, purchased Deltec's Brazilian subsidiary.

12 The impact of these patterns  
13 of resource development on the native peoples of the  
14 Amazon has been tragic. Reflecting on these injustices,  
15 Claudio Villasboas, Director of Xingu National Park,  
16 commented as follows:

17 "They say it is necessary to open up roads to  
18 populate and settle the Amazon. Now the roads  
19 are open, and we can see that man is still  
20 absent. The forests are being levelled not only  
21 to open up the roads, but also to introduce  
22 cattle ... And for this the Indians are being  
23 expelled from their reserves and our ecological  
24 balance is being savagely mutilated."

25 Now we turn to the failure  
26 of government protection of native rights. In 1968, the  
27 National Foundation for the Assistance to the Indians  
28 (FUNAI) was established as a government agency with a  
29 twofold objective. FUNAI was to protect native people  
30 until they are sufficiently "integrated" into the national  
society, and to serve as an agency for the Ministry of



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Interior by promoting the development of the Amazon.

In its original statutes, FUNAI incorporated the conclusions of a government Task Force created in 1967 to investigate the precursor of FUNAI, the SPI. It endorsed the principles of the United Nations and the International Labour Organization regarding human and minority rights. The first article of the FUNAI statutes charged it with promoting respect for tribal institutions and communities, guaranteeing the permanent possession of lands which Indians inhabit, and the exclusive use of natural resources therein, according to the Brazilian Constitution; preserving the biological and cultural equilibrium of Indian communities in contact with the national society; and defending the spontaneous acculturation of Indian communities, rather than their rapid and enforced acculturation.

By 1970, however, FUNAI began to change its policies and deviate from the principles of its original charter.

THE COMMISSIONER: Excuse me. FUNAI was the creation of the Government of Brazil?

A That's correct. By 1970, however, FUNAI began to change its policies and deviate from the principles of its original charter. Commercial groups from the south of the country, large landowners, and foreign corporations pressured the government into opening up the lands of the Amazon and opposing the recognition of Indian rights. As a result, the Indian policy of FUNAI was subordinated to the wider political and economic directives of the Brazilian model of development.



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FUNAI assumed an entrepreneurial position, contending that Indians must be integrated into the Amazonian patterns of development and growth. At the same time, FUNAI became an enormous piece of bureaucratic machinery centered in Brasilia. With massive contracts for mineral exploitation and land development, the whole issue of Indian rights became secondary to the promotion of Amazon development.

In 1972 Deputy Jeronimo Santana commented that -- and I quote:

"FUNAI .. has become an entity where groups take refuge to exploit the natural resources of the reserves where the Indians live. Today it is the Indian who is of least importance. The Indian is a 'thing' and the policy put into effect by FUNAI proves it."

In 1973, the Brazilian Government passed a new Indian Statute which virtually ignored the rights of tribal populations in the face of the extremely rapid pace of resource development in the Amazon. The new Indian Statute removed subsoil rights from native people and placed emphasis on programs for the rapid integration and pacification of the native peoples. Programs for pacification were considered crucial in order to create conditions acceptable to foreign investors. As a result, FUNAI's function became that of protecting company and construction workers against the possibility of threats on Indian lands. Programs for integration were designed to remove Indian people from their lands and make way for the operations of



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the transnational corporations. In some cases, FUNAI has resettled Indian people on reserve land not large enough to support the whole tribe. The Yanamamo nation of 10,000, for example, was given a reserve where only 300 people could survive.

The government's programs of pacification and integration have had a devastating effect on Indian tribes such as the Cintas Largas. Previously semi-nomadic hunters and cultivators, the Cintas Largas were used to a rich diet of game, nuts, honey as well as maize, yarus, peanuts, sweet potatoes, bananas, and papayas which they cultivated themselves. Today, however, they can no longer feed themselves. Hunting and planting have been severely limited, not only because of the loss of land but also because many of the people have become decimated and immobilized by sickness. They now depend on government handouts for a large proportion of their food with the result that malnutrition and starvation are widespread. An Indian agent who was originally involved in FUNAI's pacification and integration of the Cintas Largas, said the following:

"There is today a dangerous reality in the Aripuana Park. It is the loneliness, the anxious incomprehension of the people. It is an illogical moment in their history. In less than four years their lands have begun to be divested. Epidemics will now leave their mark and many more of them will take the first kilometers down the long road where they will find misery, hunger, prostitution of their women, and the end of



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their dreams."

In effect, the FUNAI programs for pacification and integration offer no protection for the Indian people and their constitutionally recognized rights in the face of rapid resource development. Once separated from their land, the Indian peoples are compelled to survive in an alien culture. They have no alternatives but to be assimilated into a system of welfareism or wage labor. Once a thriving, self-sufficient people, the Indians now find themselves reduced to a state of dependency and helplessness. As a result, some Indians have been forced into slavery, others have become beggars or exotic tourist attractions, and still others have migrated to Brazil's cities where they have become part of the massive urban poor.

The basic rationale behind FUNAI's program for pacification and integration was critically discerned by the bishops of the Amazon, and I quote:

"...if the Indians are there but do not produce according to the dictates of integrated and dependent capitalism, if they do not have the legal title to the land, if they do not own agricultural enterprises, then they must give way to the new colonizers, they must withdraw from the lands which civilization has now decided to sell or give away to those destined to develop the interior of the country. If the Indians -- thus challenged and robbed of their theoretically recognized rights, as well



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as their natural way of life, die, then let  
them die. If they resist, they are to be  
opposed as though they were the invaders of  
their own lands."



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Turning now to the Canadian connection, corporate and governmental. There is a Canadian connection to the tragic story of the Amazon. Directly and indirectly, the Canadian Government and Canadian-based corporations are involved in the colonial patterns of resource development in the Amazon. In recent years, Canadian-based corporations have extended their operations to the Amazon Basin and the Canadian Government has promoted this type of investment. A recent publication of the Department of Industry, Trade and Commerce, "Canada Commerce," January 1976, described the investment possibilities in Brazil this way:

"Why not settle down here yourself? In doing so, you would have some familiar Canadian neighbors including Alcan, Massey-Ferguson, Moore Corporation, The Royal Bank of Canada, Connaught Laboratories, The Bank of Montreal, The Imperial Bank of Commerce, The Toronto-Dominion Bank and Stelco ..."

Brascan is investigating mineral deposits in the states of Minas Gerais, Amazonas, Rio Grande do Sol, Para, Ceara, and Bahia. It is also involved in the territory of Rondonia through its mining subsidiary, Promisa. It maintains a 60 percent interest in the tin mine Jacunda, also located in Rondonia and through its interest in Swift-Armour, it holds agribusiness interests throughout the Amazon, including the King Ranch on Kaapore and Tempe Indian lands. In partnership with MacMillan Bloedel, it maintains a 250,000 acre tree farm in the State of Santa Catarina.



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Alcan manages and holds 19 per-  
cent ownership in a joint venture with the Brazilian  
government, Reynolds Metals, Billiton (Royal Dutch Shell)  
Rio Tinto Zinc and others in a \$290 million dollar  
project located on the Trombetas River for bauxite  
extraction. It also operates two completely owned  
smelters, Aluminio do Brasil and Aluminio do Brasil  
Nordeste. In addition, it is active in mineral explora-  
tion on the north shore of the Amazon between Manaus and  
Belem.

Inco, in cooperation with the  
German transnational operation, Baminco, a nickel  
exploration and feasibility project in the Goias state,  
in preparation for a possible \$500 million investment in  
Goias. It is also involved in the discovery of a nickel  
deposit in the state of Para. Inco is investigating  
copper deposits and has its own exploration program.

Noranda is involved with U.S.  
Steel and New Jersey Zinc, a division of Gulf and  
Western, in a joint venture for a zinc deposit in the  
State of Minas Gerais. Falconbridge maintains an  
exploration office, through its own subsidiary Mineracao  
Falcao Company, in Rio de Janeiro with a program  
stretching throughout Brazil.

Cominco has an active explora-  
tion program for base metals throughout Mineracao Cominco  
Limited, and has an active exploration program throughout  
Brazil. The Anglo-American corporation, the parent of

Hudson's Bay Mining and Smelting is involved in a  
joint venture to carry out exploration and recently



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purchased 49 percent of Morro Velho, Brazil's only gold mine located in Minas Gerais.

In addition, Canadian companies Swan Wooster and Howe International have been engaged in providing advanced engineering for the port and railway lines required for the joint venture to develop the iron ore deposit in the state of Para.

At the same time, the Canadian Government, through its various departments and agencies is active in the Amazon region. Two officials of CPRM told a meeting of the A.I.M.E. in February of 1975 that:

"In harmony with the goals set by the Ministry of Mines and Energy, a series of steps were taken in 1971 to set up a technical cooperation agreement between the Brazilian Government and the Canadian Government. The Brazilian - Canadian Geophysical Agreement was considered top priority by the Ministry of Mines and Energy and the work is due to start in 1975."

THE COMMISSIONER: Excuse me, what is CPRM?

A Do you want to answer that?

WITNESS DRAIMIN: The CPRM is a Brazilian Government organization which was set up to promote mineral projects in the Amazon and throughout Brazil.

Q Right.

WITNESS CLARKE: Shall I continue?

Q Yes, please sir.



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A The Geological Survey of Canada, Department of Energy, Mines and Resources has been engaged in setting up a comprehensive mineral exploration project. Roger Blake, Consul and Trade Commissioner in Rio de Janeiro commented as follows:

"This was the first step in what is hoped to be a continuing program of cooperation between two of the largest countries in the hemisphere and whose geological terrain is so similar."

The \$11.2 million study is now being carried out by the Canadian Geological Survey Companies in the three Amazon states of Goias, Mato Grosso and Para with the initial funding coming from the Canadian International Development Agency. The companies carrying out this airborne survey are Northway Survey Company, Survair Limited and Terra Surveys. The size and duration of the project make it the largest effort in which the G.S.C., that is to say the Geological Surveys Canada, has been involved outside of Canada. Results of these studies are now made available to the Brazilian Government who in turn gives them to private corporations such as Inco, already working in the area being surveyed. The GSC's involvement: "will continue through all stages of mineral exploration right up to the drilling of interesting occurrences", according to B.E. Ministra, Aid Coordinator for the GSC. Furthermore, CIDA has funded a five-year program of mineral exploration education to familiarize Brazilians with Canadian technology at the University of Bahia at a cost of \$1.2 million.



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Indeed, the Canadian government has established close working relationships with such transnational companies as Brascan, Alcan, Inco, Falconbridge, Noranda, Cominco and others presently operating in the Amazon. Moreover, the boards of directors of these mining transnationals have included members of the Federal Cabinet, government agencies, crown corporations and the major banking institutions. A case in point is Brascan which has included two Liberal Cabinet ministers, past and present on its Board of Directors. These are Mitchell Sharp and Robert Winters. Brascan's Chief Executive Officer, Jake Moore was, until recently, a member of the Board of Directors of the Canadian Development Corporation. Noranda's vice-president is on the Board of Directors of the Export Development Corporation, a federal agency.

Finally Mr. Commissioner, we look at the implications of all this for the Northwest Territories. In the foregoing analysis, we have described the colonial pattern of resource development which has taken place in the Amazon region of Brazil during the past decade. From our study, it is evident that this pattern of resource development in the Amazon is primarily controlled by transnational corporations receiving the active support of the Brazilian Government and serving interests outside of Brazil.

It is also clear that native people in the Amazon have had no control over decisions about how development takes place. This has been crucial since only they are able to protect their own



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interests and as a consequence, resource development in the Amazon not only fails to meet the needs of indigenous native peoples, but ends up destroying their culture and their way of life.

The following parallels, we believe, indicate that the Amazon case is not an isolated experience but has implications for resource development in the Northwest Territories.

Just as the Amazon region is recognized as one of the world's last uncapped storehouses of mineral wealth, so the Northwest Territories is viewed as a resource hinterland for southern Canada and the industrialized world in general. For the native people of the north, as for the Indians of the Amazon, the lands they have inhabited are essential to maintain their way of life. To separate either group from their land is to deny their being, to destroy their way of life and to disrupt the social, cultural, spiritual, economic and political relationships of their society.

Just as native people in the Amazon are excluded from making decisions on how development takes place, so the native people of the north are having their right to decide how development takes place challenged by threats that a pipeline may be built, whether or not there is a land settlement acceptable to them.



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We contend also that the Department of Indian & Northern Affairs has the same built-in conflict of interest as its Brazilian counterpart, FUNAI. That is, it is charged with the task of protecting the interests of the native people while at the same time it promotes the development of northern resources.

The involvement of transnational corporations in the resource development process is another feature common to the two regions. Indeed, in many instances the same corporations active in the Amazon resource development are also involved in the Canadian north. Brascan, whose activities in Brazil were discussed in the previous section, has a 45% interest in Yava, and acts as operator for the Yava syndicate in copper-lead-zinc exploration under way between Beechay and Casey Lakes and also base metal exploration near MacKay Lake. Through participation in Elf Canada Ltd., Brascan has oil and gas rights throughout the Northwest Territories, especially in the high Arctic. With a 12.3% interest in Magnorth Petroleum Ltd., Brascan is involved in 14.2<sup>million</sup> offshore acres in the Viscount Melville and Lancaster Sounds. Brascan Resources recently acquired controlling interest of Western Mines, which holds a lead-zinc property in the Pine Point area, jointly with DuPont of Canada Exploration. Brascan recently made an unsuccessful bid for Ashland Oil Canada Ltd., which is a member of the Delta Five group. Brascan held until recently the largest single block (7%) of Hudson's Bay Co. shares.



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Inco, which is also involved in Brazil, holds a 4.44% interest in Panarctic and a gold property in the Bathurst Inlet area. Noranda, also holds a 4.44% interest in Panarctic, and through the Canex-Placer Company, made the lead-silver discovery at Howards Pass. It is involved in copper-lead-zinc exploration for base metals near Kaminak. Noranda has an option on Cadillac Exploration's silver-lead deposit at Prairie Creek.

Falconbridge, which operates in Brazil, controls the Giant Yellowknife Gold Mine near Yellowknife Bay. It also has an option on Arcadia Exploration's silver-gold deposits at Coronation Gulf and many other sites in Slave Province. With the same corporate parent as Falconbridge, Canadian Superior Oil is a member of the Delta Five group active in exploration in the Mackenzie Delta and Beaufort Sea. Canadian Superior Oil was, until recently, a member of the Arctic Gas Consortium.

Cominco operates the Pine Point Mine and is involved in copper-lead-zinc exploration near Beechay and Casey Lakes, copper exploration near the Redstone River, gold exploration around the Con-Rycon Mine, uranium exploration near Goulbourn Basin, and diamond exploration on Somerset Islands. It owns the Con Mine and has controlling interest and manages the adjoining Rycon Mine. Cominco was a member of the Arctic Gas Consortium, and is still involved through TransCanada Pipelines in which it is a major shareholder. It owns 87% of Pan Canadian Petroleum



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which is a member of the Delta Five group and has a 17.7% interest in Panarctic. Bathurst-Norsemines optioned a 65% interest to Cominco at Hackett Lake. Cominco also has a 75% interest in the lead-zinc Arvik Mines on Little Cornwallis Island.

Hudson's Bay Mining & Smelting, whose parent, the Anglo American Corp. is also involved in Brazil and has a lead-zinc deposit at MacMillan Pass.

Four other transnational corporations are active in both Brazil and the Canadian north. Billiton (Royal Dutch Shell), through the Shell Exploration, has an option on Redstone Resources copper deposit at Coates Lake, a copper deposit at Little Dahl and Redstone River. It is involved in uranium exploration near Baker Lake. Billiton has a 11% interest in the Nanisivik lead-zinc mine at Strathcona Sound; Shell Canada is a member of the Arctic Gas Consortium and is also a member of the Beaufort-Delta Oil Project Ltd., that wants to build a crude oil pipeline down the Mackenzie Valley.

Rio Tinto Zinc has an option on Vestor Exploration uranium deposit at Nonacho Lake. Rio Tinto Canadian Exploration is investigating base metals at Arctic Red together with Welcome North and Serem Ltd.

Metallgesellschaft Company (that's a hard one, sir), has an 11% interest in the producing lead-zinc mine at Strathcona Sound and is exploring for uranium near Baker Lake. Its Brazilian involvement is through Baminco and with Inco, it has a



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1 nickel deposit in Goias state.

2 U.S. Steel is involved with  
3 the Hudson Bay Exploration and Noranda, in base metal  
4 exploration near Kaminak Lake.

5 The primary interest of these  
6 transnational corporations is in resource extraction for  
7 export at profitable rates, not the internal development  
8 of the country or region in which the resources are  
9 found, nor for the people to whom the resources belong.  
10 This is sometimes obscured by government and industry  
11 statements that these resource development activities  
12 are in the national interest, and by direct national  
13 government participation alongside the transnationals  
14 in the resource development process.

15 It may be that to some extent  
16 a parallel exists between the Brazilian Government's  
17 crucial role in promoting and facilitating resource  
18 development by the transnational corporations in the  
19 Amazon, which has been analyzed in this case study, and  
20 the Canadian Government's apparently growing role in  
21 resource development in the north. The Canadian  
22 Government and its Crown agencies have long supplied  
23 infrastructure in the north while at the same time  
24 royalty arrangements have been generous relative to  
25 provincial jurisdictions in Canada and relative to most  
26 other countries. In the oil and gas sector, the Canadian  
27 Government is directly involved through its 45% ownership  
28 of Panarctic. In a recent background study done  
29 for the churches, Professor Larry Pratt of the University  
30 of Alberta concluded that the role of government of



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Canada in future northern development,

"is likely to become increasingly direct and pronounced. .. The government is under pressure to provide public funds for high risk, high cost frontier energy development, and this seems to be the anticipated role of Petrocan, working through joint ventures and farmouts with the existing leaseholders... It seems almost certain that the government will be required to provide expensive 'completion guarantees' for any major pipeline project (much as it did for the TransCanada in the 1950s.).

In conclusion, Mr. Commissioner, we believe that the possibility cannot be dismissed of a colonial pattern of development with important similarities to the Amazon experience occurring in the Northwest Territories during the next decade. For these reasons the church insists that the construction of a Mackenzie Valley Pipeline and any other major resource development project be postponed until native people have control over the development process and there has been a just settlement of land claims with the Dene. In the interest of justice, we maintain that the Dene must have a significant measure of control over the future patterns of resource development in the Northwest Territories. To achieve this objective; a just land claims settlement is imperative. The experience of the Amazon is a living testimony of the tragic consequences that will arise from failing to achieve these



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basic objectives.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you,  
Dr. Clarke. The statement that you have read is made,  
I take it, on behalf of the Catholic Church in Canada.  
Am I to understand that?

A May I qualify that, sir?  
Two churches at the national level, both the Anglican  
and the Roman Catholic Churches, have been involved in  
sponsoring this particular study. The two churches, as  
you well know, have taken fairly strong stands with  
respect to this -- on this question, and it was felt  
that as a part of the followup procedure to our work  
it was important to engage in this kind of research  
and to work at this kind of level. So the two churches  
sponsored the Corporate Action Research Project that  
I referred to in the first couple of paragraphs of this  
presentation.

Q The statement made by the  
bishops of the Catholic Church of Canada on Labor Day  
last year -- I'm trying to remember now, was that  
statement endorsed by the Anglican Church and the United  
Church of Canada?

A That statement was endorsed  
by the leaders of the Anglican, United, Presbyterian and  
the Lutheran Church in America, Canada section. Since  
then the Anglican, United and Roman Catholic Churches  
have come together in a project as a followup to those  
statements which is called "Project North" and it's  
an Action Research Project in this particular area.  
So those three churches have been working together in  
backing this kind of a study.



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Q Yes, well just one other question and then perhaps we'll break for coffee, and I'm not -- let me put it this way, I think I understand everything you've said so far, but in your conclusion in your presentation you say, "for these reasons the church insists that the construction of a Mackenzie Valley pipeline and any other major resource development project be postponed until native people have control over the development process and there has been a just settlement of land claims with the Dene."

Now, the church in that paragraph means -- what church or churches?

A Yes. I think in terms of that particular -- in terms of the whole study here, the church is referred to in both a general and a particular sense. We have a real problem talking about the number of churches working together and we often specify that in terms of denominations, but we like to speak as "church" in that rather generic sense. But in, throughout this study I think you should take it as being the -- a study supported by the Anglican and Roman Catholic churches. And insofar as there is forthcoming from the other three that I mentioned, that would be a bonus.

THE COMMISSIONER: Yes, fine. Well, we'll break for coffee then.

(PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BELL: Mr. Commissioner, before we proceed with cross-examination, I'd just like



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to say that the two other members of this panel, Professor  
Hills and Mr. Simpson were unable to appear today and  
we propose to call them early next week some time and  
I'd filed<sup>the</sup> following exhibits as part of the evidence of  
this panel. The summaries of evidence and the appendices  
thereto, a copy of "Falconbridge" by John Deverall and  
the Latin America Working group; a copy of Supysana,  
the November 1975 issue of the Engineering and Mining  
Journal, the document entitled "Native People in the  
Brazilian Amazon"; the Impact of Development, by the  
Latin America Working group; a document entitled "A  
Survey of Mineral Resource Extraction in Brazil" by the  
Latin American Working Group; a document by Larry Pratt  
entitled "Corporate Interests in Natural Gas Development  
North of Sixty, a Report", a copy of the 1973 Annual  
Report of Brascan; a copy of the 1974 Annual Report of  
Brascan and a copy of the document entitled "A Church of  
the Amazon in Conflict with the Large Landholders and  
Social Marginalization".

I might add before we proceed  
to cross-examination sir, that Father Smith has some  
slide which he proposes to show after we adjourn this  
afternoon and everyone who is interested is welcome to  
attend.

THE COMMISSIONER: Where are  
we now then?

MR. BELL: I think we're ready to  
proceed with cross-examination.

THE COMMISSIONER: Oh fine. Fine.



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1  
2 MR. SCOTT: I was looking for  
3 Mr. Bayly. He seems to have stepped out.

4 MR. HOLLINGWORTH: I can proceed  
5 with my few questions sir.

6 CROSS-EXAMINATION BY MR. HOLLINGWORTH:

7 Q First, Mr. Brownstone, if  
8 I might direct a question to you; on page 13 of your  
9 evidence, you talk about the establishment of a liaison  
10 officer who has the job of educating the residents of  
11 the Province of Ontario and I'm wondering why the re-  
12 sidents of Ontario were singled out for this attention  
13 among all the residents of southern Canada?

14 THE COMMISSIONER: Most in  
15 need, perhaps.

16 MR. HOLLINGWORTH: Well that's  
17 what I thought sir and I just wanted to --

18 WITNESS BROWNSTONE: Thank you  
19 your honour.

20 This is due to the particular  
21 structure of Oxfam-Canada which is organized on a three  
22 region basis; Oxfam-Atlantic, Oxfam-Ontario and Oxfam-  
23 West. These regions generally decide on their own  
24 educational program and <sup>in</sup> the case of this project on  
25 its initiation, the Ontario region decided that it  
26 would support, sponsor and participate in an educational  
27 program having to do with the Northwest Territories  
28 project. So this explains the liaison officer's activity  
29 within that particular region.

Since that time, the western



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region in particular has expressed an interest and the liaison officer will now be working with the western region of Oxfam-Canada which includes the three prairie provinces and British Columbia.

I see. Thank you. Father Smith, on page 24 of your evidence, do I have the right person? There, yes, I do have the right person. Thank you.

WITNESS CLARKE: Clarke is my name.

Q I'm sorry, excuse me. There's so many people up there, I'm getting confused. On page 24 of the evidence you read sir, you quote from a study done by Professor Larry Pratt at the University of Alberta whose final remark is:

"It seems almost certain that the government will be required to provide expensive completion guarantees for any major pipeline project much as it did for TransCanada in the '50's."

Do you rely on that statement and adopt it?

A I beg your pardon? Do I --

Q Do you adopt that statement?

A Yes, we're relying on that statement, yes.

Q Well, isn't it a fact sir that there's no expense whatever involved in a government guarantee provided a project was completed and went ahead onstream as planned by a pipeline applicant?

A Well, I would like to turn



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this over to Tim Drainin here who has been working with Larry Pratt on that particular research and he'll be able to provide an explanation.

Q Surely.

WITNESS DRAIMIN: I think that Larry Pratt was trying to project into the future some of the possible ramifications of the development, and what he saw in terms of what was going to happen with the project was that there would have to be these guarantees. I'm not really that familiar with it myself, with some of the material that he's working with.

Q I'm sorry, could you speak up a little sir?

A Yes, I'm not totally familiar with the material that Larry Pratt has been working on. I'm just under the impression that he was projecting what are some of the possible repercussions of the development going ahead.

Q Well, if I suggested to you that a pipeline project which was completed and went onstream, even though it was guaranteed by the government, would cost the government nothing in terms of that guarantee, you would be in<sup>no</sup> position to agree or disagree with me? Is that how I interpret your remarks?

A Well, I think in terms of the brief, that the position of the brief would be that we do see possible ramifications of government participation as is already evident in terms of what's happening with the development around the Beaufort Sea



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and government commitments there in terms of infrastructure as well as other kinds of supports that the government has committed itself to undertaking.

(FALCONBRIDGE: PORTRAIT OF A CANADIAN MINING MULTINATIONAL BY J. DEVERALL MARKED EXHIBIT 576)

(SUPYANA; A DOCUMENTARY REPORT ON THE CONDITIONS OF INDIAN PEOPLES IN BRAZIL, NOVEMBER 1974 MARKED EXHIBIT 577)

(BRAZIL '75 DATED NOVEMBER 1975 MARKED EXHIBIT 578)

(NATIVE PEOPLE IN THE BRAZILIAN AMAZON, THE IMPACT OF DEVELOPMENT DATED APRIL 1976 MARKED EXHIBIT 579)

(A SURVEY OF MINERAL RESOURCE EXTRACTION IN BRAZIL MARKED EXHIBIT 580)

(CORPORATE INTERESTS IN NATURAL GAS DEVELOPMENT NORTH OF 60 DEGREES BY LARRY PRATT DATED JANUARY 18, 1976 MARKED EXHIBIT 581)

(ANNUAL REPORT OF BRASCAN, 1974, MARKED EXHIBIT 582)

(ANNUAL REPORT OF BRASCAN, 1973, MARKED EXHIBIT 583)

( "A CHURCH OF THE AMAZON IN CONFLICT WITH THE LARGE LANDHOLDERS AND SOCIAL MARGINALIZATION" MARKED EXHIBIT 584)



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Q Yes, I quite understand that, sir; but if the government were to provide a guarantee to a project, a pipeline project, and if that project were completed and went onstream, I suggest to you there would be no expense whatever to the government that placed the guarantee in the first place. Now can you agree or disagree with that?

A Well, I think I could disagree. I don't agree that you can make a statement like that.

Q Well, how would you disagree?

A I guess I would disagree by looking at other instances where corporations have made similar kinds of guarantees about that if things with everything, went ahead according to their own plans were carried through that the government would have no involvement. There are a number of cases already in Canada where corporations have made similar kinds of guarantees and because of change in market conditions and price structures of the commodities they're dealing with, and differing conditions within the country that they haven't been able to maintain their commitments, and I think that is a possible occurrence that might take place here in the north as well.

THE COMMISSIONER: One point it makes is though, that if the Government of Canada guarantees a loan made to the pipeline group, and they repay the loan on time and so on and so forth, then



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1 the Government of Canada won't ever be called upon to  
2 make good on its guarantee, and I really don't think  
3 there's much argument about that. In any event, it  
4 seems to me that may well be a matter for the National  
5 Energy Board.

6 MR. HOLLINGWORTH: Well, I  
7 wondered that, sir, but it is in his evidence.

8 THE COMMISSIONER: Yes, oh I  
9 know.

10 MR. HOLLINGWORTH: It seems  
11 rather argumentative, and my point is there's no  
12 expense whatever in a guarantee that's carried out on  
13 a project that's carried out, and I'm trying to get  
14 Mr. Drainin to agree with me.

15 THE COMMISSIONER: Well, whether  
16 he does or not, I don't think is going to make very much  
17 difference to me, with respect to Mr. Drainin, and the  
18 National Energy Board, it seems to me, will have to  
19 look at that and determine whether, providing a guarantee  
20 makes any difference on the National Government's own  
21 capacity to borrow on the market itself, which is some-  
22 thing that we'll let them struggle with.

23 MR. HOLLINGWORTH: Well, I'm  
24 mindful of the jurisdiction, sir, but I'm also mindful  
25 of the coverage your proceedings get.

26 THE COMMISSIONER: Well, don't  
27 feel I'm cutting you off. I didn't think you were getting  
28 anywhere with Mr. Drainin.

29 A Maybe I should turn this  
30 over to Mr. Rolfe it would be better.



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1 WITNESS ROLFE: Well, as I  
2 recall that study, which I did see a copy of, I think  
3 Mr. Pratt's point was that even though if the project  
4 is successfully completed there will be no cost to the  
5 Federal Government, but nevertheless, the fact that the  
6 Federal Government would enter into a completion guarantee  
7 would give it in a sense a vested interest in the  
8 completion of the project, so that operating under  
9 high risk conditions it would definitely be in its  
10 interest to support the project through to its completion  
11 if it did run into problems, and that is the kind of  
12 relationship I think he was pointing to.

13 THE COMMISSIONER: Well, you  
14 say that the history of Canadian development on the  
15 frontier has been one of both public and private parti-  
16 cipation in terms of raising capital, and this indicates  
17 that this project if it goes ahead will be in that  
18 Canadian tradition. That seems to be what is being  
19 said here.

20 A Yes.

21 MR. HOLLINGWORTH: Q So that  
22 really you're directing your remarks to direct parti-  
23 cipation by government using public funds rather than  
24 a guarantee.

25 A Well, I guess what I'm  
26 saying is that they're related in the sense that a  
27 government that makes that guarantee could be in the  
28 case, if a project did run into trouble, would be operat-  
29 ing under a certain influence to provide financial  
30 backing, etc., to participate in a more direct form



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in order to avoid the collapse of the project.

Q So that's your interpretation of Professor Pratt's remarks?

A Yes, as I recall them.

MR. HOLLINGWORTH: I have no further questions, thank you.

MR. SCOTT: Mr. Steeves?

MR. STEEVES: I'm going ahead of Mr. Bayly.

MR. SCOTT: I'm sorry, Mr. Bayly's returned. I overlooked that.

MR. BAYLY: I have no questions, Mr. Commissioner. Go ahead, Mr. Steeves.

CROSS-EXAMINATION BY MR. STEEVES:

Q Mr. Brownstone, if I understand your evidence at page 3, you talk about a more equitable distribution of the -- I was trying to get the line number -- you talk about sharing on an equitable basis. Do you see that?

"The <sup>overall</sup> aim of development is to bring into being a society in which the available resources are shared by the people on an equitable basis."

Have you or your organization been involved in advising the Native Brotherhood about their claims and what claims they should formulate and place before the government?

WITNESS BROWNSTONE: No, we have



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1 not, your honor.

2 Q Now, what does that  
3 statement represent, is it from the point of view of  
4 Oxfam, or is it just your own point of view?

5 A It's the point of view  
6 of Oxfam. This is a policy statement of the organiza-  
7 tion.

8 Q It's a policy of Oxfam?

9 A It's a policy statement  
10 of Oxfam-Canada.

11 Q Do you know anything  
12 about the present organization and constitution of the  
13 Government of the Northwest Territories?

14 A Yes, I know something of  
15 it, your honor.

16 Q Do you know how the  
17 council is made up, the Territorial Council? In terms  
18 of its membership, I mean.

19 A How it's constituted?

20 Q Yes.

21 A Politically?

22 Q Yes.

23 A I'm afraid I can't comment  
24 in any detail, your honor, no.

25 Q You can't what?

26 A I can't comment in any  
27 detail.

28 Q Because you don't know?

29 A That's right. I'd like  
30 to address that question to Mr. Rolfe. He has information.



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Q I'm sorry, to who?

A Mr. Rolfe.

Q Oh, can you assist me on  
that, Mr. Rolfe?

WITNESS ROLFE: Perhaps, I have  
some knowledge of the structure of the Territorial Council.

Q Well, as I understand the position,  
a majority of the members of the council are members of the  
organizations represented by Mr. Bell, is that correct?

A I understand that the  
majority of the council are native people, yes.

Q And isn't that situation  
entirely different from every situation mentioned by  
each witness on this panel? There's no such situation  
in Brazil, is that not true?

A I'd have to check that  
with other members of the panel.

WITNESS SMITH: There's no  
direct parallel in terms of government structure. I  
don't think there's any direct parallel in terms of  
organization.

Q Well, is there an indirect  
parallel? You're trying to make some kind of a parallel,  
are you not?

A I think what we are  
attempting to show is that the broad conditions of  
development, taken in both areas -- socio-economic,  
cultural and spiritual dimensions -- that native  
peoples in the Amazon as well as in Canada do share  
a common value system and that they have also suffered



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1 common problems, common effects of what is frequently  
2 called "development".

3 Q Well, are you saying that  
4 the degree of any to which native people participate  
5 in the political processes of the areas in which they  
6 are living is of no significance?

7 A No, I'm saying that that  
8 is of major significance, participation, and being  
9 aware of what is happening and having some decision,  
10 some input into the decision-making process I think  
11 is what we defend.

12 Q Well, how do you classify  
13 the participation of the native peoples of the Northwest  
14 Territories in the Territorial Government? Do you  
15 classify that as major?

16 A I think the native people  
17 themselves would have to answer that question.

18 MR. BELL: I think Father Menez  
19 wants to answer that.

20 MR. STEEVES: No, I'm going to  
21 ask this witness first of all. You don't know the  
22 answer to that?

23 A No, my answer to that  
24 is I feel that that is a question that the native peoples  
25 themselves should answer as to their participation.

26 Q I'm sorry, Father, could  
27 you contribute to that?

28 WITNESS MENEZ: First of all  
29 there is a general statement in the Territories and  
30 especially coming from the white people saying that



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1 the Territorial Council is a product of a colonial  
2 state in the sense that the Territorial Council doesn't  
3 have what we call the power of deciding. Just more or  
4 less an Advisory Council. For me I think this is  
5 a most important thing. The whole system -- Territorial  
6 Council, local government, is based on a system that's  
7 a flowing thing to what we call Indian culture, the  
8 people's mentality, so it is almost impossible for them  
9 to adapt to that system.

10 Q Are you talking about  
11 the consensus idea amongst the native communities?

12 A Yes, because first of all  
13 it's addressed in the language that's foreign to them  
14 and the system opposed to them to govern themselves to  
15 govern their country is foreign to their mentality,  
16 and that's one of the reasons, I think, why one of the  
17 councillors is resigning from the Territorial Council.

18 Q Are you involved in  
19 education now?

20 A No sir. What do you  
21 mean, schooling?

22 Q Yes.

23 A No.



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Q I'm sorry Father, what you have to say then applies equally to the non-native population of the Territories as to the so-called native populations. Is that right?

A What I have to say about?

Q About the political structure.

A Yes. About the only difference on the system is understood by the transient population, we call it sometimes the white people.

Q Yes.

A You know, they are no problem. They can understand it and criticize it. The native people <sup>don't</sup> know about talking about the whole.

Q I'm sorry, you say the native people don't have sufficient understanding of the political system to criticize it?

A Yes.

Q Is that your evidence?

A I say the majority of the native people, they cannot even criticize the system because they don't understand it and the word that we use is -- we don't know.

Q Could I return Mr. Brownstone to you and to page ten of your evidence, where you refer to the indigenous economies in the middle of the middle paragraph? Page ten. Have you found that sir?

WITNESS BROWNSTONE: Yes, I have.

Q I take it what you're talking about there is the apprehension that if development



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proceeds in the Territory, the present indigenous economy will suffer. Is that right?

A Present and historic, yes.

Q Right, well what's the present state of the indigenous economy of native people of the Territory? Do you know?

A Well, the present state of the indigenous economy is a very disturbed state.

Q It's what?

A Disturbed in terms of its historic character.

Q Yes.

A The argument we put here is that <sup>this</sup> kind of disturbance is in the name not of the benefit of the indigenous people, but the intervening dominant group. We're arguing here for a reversal of this kind of process and a building of an economy from indigenous values with indigenous structures and on the basis of self-determination, of indigenous people.

Q You mean you're arguing for a going back to something that existed a long time ago?

A No, I'm not arguing for that at all. I'm arguing for using the cultural base which is still present in the Dene people, using this base as a platform -- as a starting point of a developing economy, not a retrogressive one.

Q At page 11 of your evidence you refer to the assistance you've been able to give the native groups through financial and other support. What sort of other support?



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A What is the precise  
reference in the brief?

Q The top of page 11.

A I'd say that our support  
consists in our educational program and a political  
action program.

Q I see, and does your  
political action program involve advising the Native  
Brotherhood?

A Not at all. Our political  
action program basically is -- has focused on the  
Federal Government and its policies and on the Canadian  
public generally, and our membership of course.

Q Sir, on page 15 of your  
evidence at the last paragraph -- and the last paragraph  
you speak about and I quote you:

"A land settlement that recognizes the aboriginal  
title of the Dene to their traditional lands, that  
invests them with the power to chart their own  
course for the future".

And so on. Do you have knowledge of the details of what  
you're talking about there so far as the claim of the  
Dene is concerned?

A Do I have knowledge of  
the details of the claim?

Q Yes.

A Put forth by the Dene?

Q Yes.

A Yes, I would think that the  
-- that knowledge isn't very extensive and needn't be.



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The claim is simply for a reassertion of aboriginal title.

Q I see and what do understand is meant by "aboriginal title"?

A I assume that means ownership in the ordinary sense and the discretionary power that goes with it.

Q What is that discretionary power?

A It deals with the power to utilize resources within the confines of Canadian law.

Q And Canadian law, including the right of eminent domain or expropriation?

A Yes, of course.

Q Do any of you gentlemen on the panel disagree with that? Father, do you disagree with that?

WITNESS MENEZ: Disagree with what? Could you --

Q With what the witness just said.

A Yes, but what was the meaning exactly of the aboriginal rights?

Q Yes. Do you understand it to be subject to the laws of Canada?

A Well, I think it would be up to the native people to answer that question I suppose. If they want to look, to consider this land as their land 100 percent and get the full political power



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they want, well it's up to them.

THE COMMISSIONER: What Mr. Steeves is saying Father, is that let us suppose that the Government of Canada were to say to the Dene, "All right, we acknowledge that you have aboriginal title to the lands that you claim." Mr. Steeves is saying that the Government of Canada retains the power to expropriate any land that is needed for the construction of a pipeline. What he's saying is -- he says to you you don't take any exception to the laws of Canada applying to the Dene in the same way as they would <sup>to</sup> people in any other part of the country.

Maybe I'm not making this any clearer, but that's what I thought you were driving at.

MR. STEEVES: And I'm obliged to you, sir. You are, I think. Do you understand now Father?

A No, I'm not very fast, very quick this afternoon but one thing I understand that the land belongs to the people and that question should be asked of them. If there's a land claim and they say, I don't know how many thousand square miles, I'll go along with any decision that the Dene will take regarding their land.

Q Well you've lived with the Dene for a long time, haven't you?

A Yes.

Q You understand the way they feel about the land?



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A Yes.

Q Do they see that they --  
I'm sorry, I didn't arrange that. Do the Dene people  
see that their relationship to the land is such that they  
have to have absolute sovereignty over it?

A The reason why I'm not  
so quick is because I've been so many years with the  
people. After two years in the north part, I would have  
got an answer that would have been square, you know.

Q Yes.

A Now, I think sir the  
mentality of the people the land is not something, it's  
somebody and <sup>you</sup> share with the people who want to share it  
with you and the <sup>way</sup> you want. It's a living person. You  
don't sell a person. You don't sell your mother. You  
don't martyr your mother but you -- I would say that you  
love more your mother when your mother loves other  
children that don't belong to the family.

You know, I'm approaching it with  
guts more than with brains, I would say in a sense and  
with no background of I would say, with not in mind of  
business, exploring and getting rich and so on, but  
sharing, respecting and I think that's the approach the  
people will have to, but because they have to address  
themselves to a society who's imbued with those  
definition like the square miles, exploring, building  
a road on something there to get those categories in  
their papers and they ask for so many square miles  
which is against their, you know, their way of thinking  
I would say. So perhaps it will show you the map of the



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country of the north how it is utilized, used by the people and they will ask you nothing so they will be all right to say, "well, come and share with us the riches of this land of our mother which is the sun, the sky, the animals, the plants and let's live together in harmony with nature." I know it doesn't make any sense though to many people.

Q Well I'm not suggesting that at all.

A To us it does.

Q You know, I'm not suggesting that at all, but you can't answer my question about -- I'm sorry am I interrupting you?

A So with that approach, I don't see what the Canadian laws have to do, you know with what you are calling expropriation or something. It doesn't make sense.

Q Well do the Dene people, in their relationship with the land that you've described see it necessary to live outside of Canada in order to have that feeling towards their land?

A You don't have to --

Q Live outside of Canada?

A Yes.

Q Become a separate nation; is that what the Dene people are asking for?

A I don't know. You ask them. I'm not a Dene.

Q I'm sorry --



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A No, no, I'm not a Dene  
so I cannot put, you know, answers in the mouths of  
those people.

Q O.K.

A It's something that's --  
you're asking for an answer and there is no answer tonight.  
You know, it's what we call a dynamic process. You  
discover it by living and I suppose many of the Dene  
would be embarrassed to answer you exactly what a land  
claim will be. I think sir it's a matter to sit  
together on a table and start to explain point by point  
you know. Like the Dene would say like in their  
Declaration, that the land is our land and come to us  
and share with us. That may <sup>be</sup> part of the approach. I  
don't know. Then afterward, we'll talk about Canadian  
laws, the game laws and things like that.

It's what we call a existentialist  
approach and not a static approach I think to a problem.  
It's life. It's not written in black and white. It's  
not a book.

Q Well, I'm not quarreling  
with that approach at all. No, I say that seriously.

A Yes. Yes.

Q Don't you agree with me  
that there's got to <sup>be</sup> some practical mechanical ways  
of achieving a just settlement for the Dene people?



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Cross-Exam by Scott  
A Oh yes.

O You've got to do more  
than talk about emotional feelings, don't you?

A Yes.

Q And from your knowledge  
of the Dene you can't tell me or make any suggestion  
as to the practical aspects of the ownership of land  
and the aboriginal rights. Is that the position?

A No.

Q Can you tell me anything  
about the practicalities?

A No, it doesn't worry me  
because it is not my problem in a sense. I  
listen to the people. I don't ask to reveal what  
people have been telling me not as a secret but more  
or less like a friend, some way of thinking the problem  
but nothing different. I don't have to expose that  
in public. It would not do anything, I don't think,  
for the problem we are dealing with, which is moral,  
so you were asking a question about destroying the  
economy of the natives, the natural economy of the  
natives and that would be more perhaps to the point.

MR. STEEVES: Thank you very  
much, Father.

CROSS-EXAMINATION BY MR. SCOTT:

Q Mr. Clarke, I have some  
questions for you, please. On page 4 of your paper  
you refer to the decline of populations in the Amazon  
Basin between 1900 and 1940. What has the state of the



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1 population been since that period up to the present?

2 WITNESS CLARKE Since 1940,  
3 you mean, up until the present?

4 Q Yes.

5 A Well, again I think it  
6 would be useful here, sir, for a good answer to your  
7 question to refer to someone who's been in Brazil, who  
8 has an idea, you know, in watching that situation in  
9 the Amazon and so perhaps Father Smith, could you --

10 WITNESS SMITH: Well, the --  
11 as the text points out, in the 1870s when the first  
12 recorded contact was made with native people in the  
13 Amazon there was a thriving community of various tribes.  
14 As you know, the Amazon Jungle cannot support large  
15 communities, so you find small tribes of perhaps 100  
16 families and would find perhaps 17 to 18 villages  
17 that make up one ethnic group that recognizes themselves  
18 under a specific name or title, and the statistics are  
19 extremely difficult to come by but tribes that were  
20 the Villa Boas, Lobus Brothers and the Xingu Reserves  
21 knew of tribes and here again we talk of the oral  
22 tradition because these people do not have a written  
23 tradition. They speak of the time of their grandfather  
24 and their great grandfather, or they speak of the time  
25 of the empire, 1890s and refer to certain numbers of  
26 peoples in tribes at that particular period.

27 Q I perhaps haven't made  
28 myself clear, but I understand from the paper that it  
29 is estimated that in, let us say, the 16th century,  
30 the populations were somewhere between one and five



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1 million and then the second-last sentence indicates  
2 that as a result of atrocities and natural disasters,  
3 by 1900 the population had been reduced to less than  
4 a million, and that by 1940 the estimate was half a  
5 million. What I'm really asking you is, I'm asking  
6 to see if there's any parallel with what's happened  
7 in the Northwest Territories is what do we know about  
8 1950 or 1960 or 1970? What are the populations now in  
9 the Amazon Basin?

10 A I don't have specific  
11 statistics on that.

12 WITNESS DRAIMIN: There has  
13 been a rapid decline in the number of native peoples  
14 estimated to be in the Amazon Basin. I think according  
15 to Brazil's leading authority on native peoples,  
16 Professor Darcy Ribeiro, he calculated approxi-  
17 mately five years ago, using the data that he had, that  
18 given a present rate of the decimation of the native  
19 people by the year 1980 there might not be any native  
20 peoples left in Brazil. But that's just an estimate  
21 and it's not clear exactly what numbers of native  
22 people exactly exist. I think right now estimates  
23 probably lie somewhere in the region between 50 and  
24 100,000 native peoples in Brazil.

25 Q And those would be native  
26 people who reside generally in the Amazon Basin?

27 A They're not all in the  
28 Amazon Basin actually. Some of the more developed areas  
29 in the south part of the country have their own Indian  
30 Reservations as well, which they're not actually



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1 specifically called part of the Amazon Basin, they're  
2 on the periphery of that.

3 Q Well, I'm led to believe  
4 that for better or for worse, many natives in the Amazon  
5 Basin have migrated to the cities in Brazil.

6 A Well, I don't think  
7 that's at all true. Some of them have. I think what  
8 many of them have done that have survived thus far,  
9 people that have actually just gone farther back from  
10 the centre of the basin. Right now we have a situation  
11 where the lattice work of roads that is developing all  
12 over Brazil is just pushing the Indians farther back  
13 into the jungle. The situation now in the territories  
14 of the north-west of Brazil, for example, there are  
15 native people tribes that live there that aren't  
16 indigenous to that particular area, they've migrated  
17 there because there hasn't been intrusion by the non-  
18 Indian as of yet.

19 Q Well, perhaps then if  
20 we took, would it be fair to say very very roughly that  
21 it would be your guess that at, let us say, 1965 the  
22 population would be, let us say, 100,000?

23 A 1965. You say 1965 or 1975?

24 Q Well, either one. What  
25 I'm trying to get is do you think it's reasonable --

26 A I'm not sure.

27 Q -- no, the numbers game  
28 has begun with this paragraph in which the declines in  
29 population have been described. I'm interested in that  
30 because that has not been paralleled in Canada, and I



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1 want to know first of all, has that decline continued  
2 and approximately to what point?

3 A The decline has continued  
4 and I couldn't give you really accurate figures, but I  
5 would say that presently it's between 50 to 100,000  
6 native people in Brazil.

7 Q All right. Now what is  
8 the -- what are the reasons for it, so far as they can  
9 be judged, <sup>for</sup> that decline in population? Is it birth  
10 rate or is it other factors?

11 A Oh, I think a large part  
12 of it results from the imposition of foreign cultural  
13 values, the imposition of moving Indians about, the  
14 contraction of non-Indian diseases <sup>because</sup> of the intrusion  
15 of white settlers in the area.

16 Q Well, if we could take  
17 it step by step, I take it that what you're saying first  
18 of all is that there have been the continued introduction  
19 of diseases that have killed part of the population.

20 A That's correct.

21 Q What other factors are  
22 there?

23 A Well, there's cultural  
24 demoralization that's taken place in a large number of  
25 places where the patterns of the Indians' livelihood  
26 is disrupted because the environment has not been able  
27 to support their lifestyle.

28 Q Well, how does that  
29 reduce the population?

A Because the Indians are



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1 dying of starvation. There is a higher rate of infant  
2 mortality because mothers aren't able to give birth  
3 to children because they are suffering from malnutrition  
4 themselves. The high incidence of <sup>mental</sup> retardation as well.  
5 There have been some cases where native peoples under  
6 the impression that they have to flee from so many  
7 different areas constantly, feel that they are in a  
8 better position to flee if they don't have children,  
9 so some women have gone so far as to aborting  
10 their babies, under the impression that that would  
11 give the tribe a better chance for survival.

12 Q Well, would it be  
13 correct to say then that one of the principal causes  
14 for the decline of the population has been poverty,  
15 that is to say malnutrition and the inability to  
16 control disease, to provide medical safeguards for  
17 childbirth and so on?

18 A Well, you're sort of in  
19 a vicious circle there. Where exactly does the circle  
20 start and where does it begin? I mean, the final  
21 diagnosis the coroner will give you the reason for  
22 death might be disease or it might be malnutrition, but  
that probably isn't the origin of the problem. I think  
23 it would be a mistake <sup>just</sup> to look at the statistical sort  
24 of data on <sup>what was</sup> the cause of death. The cause of death, its  
25 repercussions are much wider than just that. We're  
26 talking here about the whole pattern of livelihood of  
the people -- that the people are trying to maintain  
and its disruption. I think it would be unfair to  
say that if you just put them in a hospital that would



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1 prevent the people from dying because of access to  
2 medical facilities or anything else. But I think in  
3 terms of describing the deterioration of the native  
4 people, that perhaps Father Smith would be in a better  
5 position to do that to your satisfaction.

6 Q Before we pass on to  
7 Father Smith, the reason -- I'm sorry.

8 THE COMMISSIONER: Mr. Bell  
9 wants to get into this.

10 MR. BELL: I believe, Mr.  
11 Scott made a statement that the decline in numbers of  
12 native people had <sup>not</sup> occurred in Canada, and that's not  
13 my understanding of what we heard in Father Fumoleau's  
14 evidence.

15 MR. SCOTT: No, that isn't  
16 what I said. What I said -- what I intended to say if  
17 I didn't say it, is that a very drastic decline had  
18 occurred in Canada and had been reversed and what I'm  
19 looking for, and I think we know something in Canada  
20 of why the reversal has occurred, and what I'm really  
21 looking for is, if there hasn't been a reversal in  
22 Brazil which would parallel the Canadian experience,  
23 what the reasons for that are, because those reasons  
24 no doubt will point out a different socio-economic  
25 or cultural experience. Now did somebody else want  
26 to add to the answer that has been given?

27 WITNESS SMITH: I think, sir,  
28 we could agree that poverty is a cause and yet I think  
29 we would have to see poverty as a provoked phenomenon,  
30 and not simply an effect of a given environment, because



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1 until 1964 the Amazon was indeed a very remote region.  
2 It was accessible only by riverboat, and it's a long  
3 river, 3,000 miles, with all kinds of tributaries, and  
4 by small plane. Many of these native populations,  
5 because they are so small numerically, because of the  
6 jungle living conditions which can support only small  
7 communities, their balance with the land, their balance  
8 with nature and with animal life is extremely delicate.  
9 In a community of 100 and 125 people who, I think  
10 it's important again to recall of a normal tradition,  
11 they are a people who have a global vision of history,  
12 who have a global recall of events, they are people who  
13 have been persecuted over a long period of history, and  
14 recall that their grandfather, their great grandfather  
15 was killed by people coming in who were not of the  
16 tribe, who were non-Indian peoples. Since 1964 a large  
17 number of roads have been built in the Amazon Basin,  
18 and once again I think the parallel we have in the  
19 Northwest Territories because native peoples in general  
20 have a system of using the land base, which is communal,  
21 they do not have a metric system, they do not have an  
22 English system or a French system, the land is a living  
23 being and therefore to cut off part of it, because in  
24 a nomadic people you must move in order to hunt, there  
25 are seasons where you must move in order to fish, and  
26 if you have a road coming in with 100 and 125 men who  
27 bring with them disease, who bring with them guns,  
28 and who bring with them a new way of life that is  
29 totally unintelligible, the only response then at times  
30 is <sup>one of</sup> violence, and violence generates the cycle of violence.



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In answer to this institutional-  
ized violence which is the building of roads, which is  
the taking of lands, which is the driving of people  
from land without consultation, without understanding  
who they are and what the land represents for them, then  
in answer to this institutionalized violence there is  
the violence of the oppressed people, the Indian who  
only responds because he is peaceful, who only responds  
in violence because he is the victim of violence. I  
think we understand poverty as provoked phenomenon, but  
it is not that diseases have suddenly increased. It is  
because the contact with so-called industrialized  
society has increased and that the Indian has been  
totally marginal to this process that the dissemination  
has gone on.



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1  
2 Q Well, I suppose what  
3 troubles me is the attempt to draw a parallel with the  
4 experience in Brazil which has been very carefully  
5 done in this paper with regard to who the developers are  
6 and all the rest of it. And what rather troubles me  
7 is this. Is it possible to draw the kind of parallel  
8 you are attempting to do between the Brazilian Amazon  
9 Basin people who were absolutely remote from contact  
10 with the white man until let us say a decade ago, with  
11 on the other hand, the people of the Mackenzie Valley,  
12 who for better or for worse have had a longer experience  
13 with the -- with development and the white man's work?  
14 Is that -- does that parallel really -- is that  
15 parallel a realistic one?

16 WITNESS MENEZ: I think so.  
17 It is only a parallel and you don't expect a parallel  
18 to be exact of point for point. For example, you are  
19 just showing up a parallel that's not proving anything  
20 in a sense. I mean that's not for the good of the  
21 people because of the decline of the native people in  
22 the Northwest Territories stopped almost  
23 in that -- at one point, in 1954, '55 and then it  
24 went up after that but it is stayed equal for many years,  
25 for about 150 years according to the studies that we have.

26 The other point you are  
27 mentioning that the people of the north have been in  
28 contact with the industrial world for so many years that  
29 the impact is not so great but perhaps that impact has  
30 been going on for more years here, you know, with the



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1 fur industry, the wage earning situation given to some  
2 place more than others and like a saw mill operation,  
3 fishing industry, transportation, the situation  
4 organization, what else we have? I know it's getting bigger  
5 and bigger all the time. So it has been more progressive  
6 so the impact was not so brutal perhaps than in  
7 Brazil.

8 Q Well, let's then take  
9 the parallel as we have it and see what we can -- I'm  
10 sorry, you wanted to make a comment?

11 WITNESS BROWNSTONE: I want  
12 to respond as well to the question. My position would  
13 be that the characteristics of development, Brazil and  
14 Canada are virtually identical. The consequences on  
15 native peoples in Brazil and Canada are somewhat  
16 different but I think only at the level of physical  
17 survival. I think it is quite easy to demonstrate  
18 that the physical decimation of the Amazon Indians will  
19 not likely be repeated in Canada, has not been repeated.  
20 But in every other criteria of development or human  
21 existence, I think the situations are quite identical.  
22 There hasn't been massive physical extermination  
23 although some episodes in Canada which I think qualify.  
24 There has been a physical violence perpetrated in  
25 Canada, not extermination but violence. Certainly  
26 there has been extermination of cultures, of social  
27 organizations, of political rights, not in formal  
28 terms, but in terms of a participative role in Canadian  
29 political society. All of these I think are predictably  
30 occurring, will predictably occur in the face of a



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1 development of the sort that is now being contemplated  
2 for this valley. It certainly has occurred in other  
3 parts of Canada where industrialization has come in  
4 whether it be the forest industries in northern  
5 Manitoba or the similar industries in Alberta, mining  
6 industries. All of these things are, I think, at the  
7 level of, the social level, the political level, the  
8 economic level. The parallels are very striking  
9 between Canada and Brazil.

10 Q Well, I guess what I  
11 have been asking and perhaps you might have some comment  
12 on this is, is does the time frame over which these  
13 things have occurred and the time frame in which we  
14 find ourselves in Brazil, a decade after the first  
15 entry of the white man to the Amazon Basin, the Northwest  
16 Territories half a century after the entry of the  
17 white man in the fur trade, does that make a fundamental  
18 difference to the parallel?

19 A I would say it makes no  
20 difference at all in terms of the effective status  
21 of the native people as between these two places.  
22 Certainly, hypothetically, if you have, a longer  
23 development process then you have a longer period in  
24 which to adapt, but the issue is whether there was any  
25 adaptation in either situation. And my answer would,  
26 I think, basically would be, no. That you haven't had  
27 in the face of 50 years of meeting of native people  
28 and non-native people in the Northwest Territories, an  
29 adaptive process which favours the status of the native  
30 people. There have been references here to participation



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1 on the Territories Council which of course, perhaps I  
2 shouldn't say, of course, is a democratic sham. That  
3 participation on the Council does not give native people  
4 an effective political base or effective political  
5 power. It isn't even a reasonable transitional phase  
6 towards this kind of process.

7 Q Well, then, if we begin  
8 with the assumption that the parallels are useful and  
9 provide an interesting comparison, let's go back to  
10 Brazil just for a moment and if it should be -- if  
11 it were determined that in a certain time frame,  
12 development of the Amazon Basin was desirable, what  
13 are the preconditions, if any, for that development? We  
14 have been told that in the case of Brazil the horrible  
15 things that have happened, what should the course have  
16 been that would have avoided those consequences?  
17 And relate that if you can to the other parallel that  
18 you make, the Mackenzie Valley.

19 WITNESS CLARKE: Could I try  
20 to start that then? I think the principal lesson that  
21 comes out of the Amazon case study, while the  
22 parallels in all cases are not perfect, the principal  
23 lesson is the question of the relationship between  
24 the people and land and their own economy and as we  
25 were pointing out in the Amazon case study, you had a people  
26 who had a self-sufficient economy and who could provide  
27 for themselves on that land. With the introduction of  
28 industrial development in the massive way that it  
29 occurred and is occurring still in the Amazon, you have  
30 people who press to move off that land and that land is



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taken over and those resources are developed.

Now, it seems that the principal lesson that comes from all that is the question of what is, you know, in terms of the impact, is the impact upon the people losing control over their own way of life. Now, that's not only in terms of culture and socially but also economically because the examples we use, for example, when you take 10,000 people and put them in an area where only 300 could survive, you have got that situation of nonsurvival in terms of being able to feed themselves.

Q I drew that from your paper, Father, but what I am really asking is what would you have done.

A Well, just, can you wait?

Q Yes.

A Can you hold on a minute?  
 I'm not a priest either.

Q I'm sorry. I think that's what you say.

A In terms of -- the principal lesson from all that is the whole question of control over their future economic development and the question of a settlement, a just settlement of land claims prior to any kind of industrial development and that is the conclusion that we reach in the study and it is the principal lesson that we have to draw from that.

You have the whole



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1 situation that in order that a people can have a sense  
2 of power and involvement in decision making regarding  
3 their future, land is essential and their land rights  
4 and a recognition and settlement of those land rights  
5 in a just manner is an essential precondition to the  
6 introduction of industrial development on that scale.  
7

8 Q But to what purpose, what  
9 follows from that? You know, let us assume the  
10 Brazilian Government had said, "All right, we recognize  
11 communal title in the people of the Amazon Basin in  
12 their land." What follows from that?  
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1 A Well then the native  
2 people holding title to that land would be in a  
3 position to negotiate with developers, etc., regarding  
4 the development of that land. But the point is they  
5 have -- they're in a bargaining position then to be  
6 able to make certain that that pattern of economic  
7 development is not a detriment to them as a people.

8 Q All right. Any other  
9 pre-condition for this kind of development that you  
10 want to add? Or anybody else, for that matter.

11 A Mr. Scott, is it?

12 Q Yes.

13 A May I just clarify my  
14 last point, just one step further? You know, it's  
15 the same situation in terms of a parallel as far as  
16 the Amazon region of Brazil is concerned. When you  
17 move in with that kind of industrial development and  
18 people are moved off their land and they can no longer  
19 maintain a self-sufficient economy, there's only two  
20 choices in effect: Either people are forced into a  
21 kind of wage economy, or welfarism is the other choice.  
22 I think what's really crucial here is that it's not  
23 just a question of a principle regarding a just settle-  
24 ment of land claims in terms of what we're talking about  
25 in the Northwest Territories, but that that is the  
26 essential ground, if you will, the essential condition  
27 for a people to be able to engage in developing their  
28 own economic programs for economic development, and  
29 before -- if we're really talking about an alternative,  
30 a real alternative, <sup>to the</sup> levels of wage economy on the one



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hand and a welfare society on the other, surely that, too, is a pre-condition before industrial development proceeds.

Q Well, let's carry on then with Brazil simply because it's a little more less explosive in this area than some other things. Let us assume the Brazilian Government recognized communal title and it was thought in the interests of other persons living in the country to proceed with development. I understand that it would probably take two or three generations to develop the kind of political organisms that you're talking about on the part of the native people in Brazil that would allow them to respond to that challenge.

A Well, I personally am not competent to make a judgment regarding the Amazon native people. However, I understand the nature of your question. Does anybody -- Bill, do you want to respond to that?

WITNESS SMITH: Oh, I think that in fact they have control of their land and they have then, they are in a position of equal in any bargaining that would go on. If it takes them 200 years to negotiate, that's their right, and I don't think it is up to the developer to say, "Well, now if you can do this in two years, <sup>fine,</sup> and if you can't we're coming anyway." Otherwise, where does the ownership of the land come , if I must adjust or integrate within a given time period?

Q Well, you see, that brings



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us back to Mr. Steeves' question which, as I understood it, was really to say this to you. Nobody in Canada owns their land in the sense that they can prevent it from being given up. Everybody is subject to a determination by democratic government that the land should be taken if the project be as simple as a school, or a highway or a bridge, and in what sense are aboriginal people different in their position, vis a vis the government of all the people?

WITNESS CLARKE: Mr. Scott, I think the kind of thing that your questions are leading towards is the whole question of time framework, and given that, we have to recognize something that is very difficult for us as white people to recognize, and that is the tremendous pressures that come to bear on a small group of people who have inhabited large areas of land for a long time. You know, the time sequence from one form of society to another and the radical changes that occur are difficult for us to comprehend. I think that the kind of position I know that the churches have been taking on this whole matter, and we're studying this thing fairly carefully, we think that a period of time is essential. In other words, a kind of a moratorium thing, on all major resource development to give sufficient time to work out some of these things, and not have to, for the Dene, for example, to be put in a position of being pressurized to come up with a land claims settlement within a few months that kind of thing is just too much for any people in that state of affairs/<sup>have</sup>to face. Now the exact question



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about time period, how long and all that sort of  
thing, I personally don't have an answer to; but I  
know a lot of people are thinking about this, and one  
of the most difficult problems we face is that as  
white people we can't really comprehend the consequences  
of what's really in process already.

Q Well now, one -- I'm sorry.

THE COMMISSIONER: The last  
sentence -- forgive me, Mr. Scott -- maybe there was a  
thought bedded within it that / <sup>slipped by me,</sup> but what did you say?

"We can't comprehend the consequences of  
the process once set in motion?"

Is that what you were getting at? I was with you to  
that point.

A Yes, I mean simply this,  
that the consequences, I mean there's already been a  
series of decisions regarding the Mackenzie Valley  
Pipeline in one way or another. Now what impact those  
decisions really have, we don't know; but I mean we  
can assume, I think, Mr. Commissioner, that there is  
a time frame work involved as far as the companies  
concerned. I mean this is the pattern of the way  
corporations are involved in major resource  
development projects.

Q They have a time frame,  
but every few months they come here and announce  
it's been put off for another year. I'm afraid it's  
Arctic Gas, too.

A The very existence of  
a possible time frame would have certain consequences



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1 is what I was referring to.

2 THE COMMISSIONER: Yes.

3 MR. STEEVES: Could I ask a  
4 question of the same gentleman? As I understand,  
5 listening to all you gentlemen, there seems to be a  
6 recognition that some sort of industrialization was  
7 inevitable in the Amazon Valley and that some sort of  
8 industrialization is inevitable in the Mackenzie  
9 Valley. Am I wrong in my interpretation of what you said?  
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A That it was inevitable?

Q That the process that took place in the Amazon was inevitable and that the process of industrialization is inevitable in the Mackenzie Valley.

A No.

Q Oh, I see. Well, I'm sorry, I think this gentlemen on the extreme left said that the reason why there should be a land claim settlement first. Am I correct?

A Yes.

Q Is that so the native people of the Territory can have some control through bargaining, of the development of the land over which they exercise that control. Do you mean development in the sense of industrialization?

WITNESS SMITH: Well, I think development in the sense of any industrial activity that is going to have an impact that such activities have on peoples who have a very peculiar relationship to the earth that we industrialized peoples do not have and have extreme difficulty in comprehending. For example, the definition of genocide in the U.N. Charter is very broad to the point of saying that anything that is done to disrupt the way of life of a people can be considered as the destruction of a people.

I think the problem lies in that we have one set of values. We look at ownership. We look at development in one way. We are dealing with a people who have another set of values, another way of



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looking at ownership and it's a question of communication. So any kind of activity that upsets radically and essentially the mental state, the spiritual state, the integrity of the people is, I feel, an act of violence, and that therefore we have to be cautious and we have to make the efforts necessary to understand insofar as we can and to foresee insofar as we can, what the implications of our activities are.

THE COMMISSIONER: Could I just ask you gentlemen something, ask you to comment? This is -- the Inquiry is naturally concerned, vitally concerned with the attitudes of the native people of the north, the Dene and the Inuit because this pipeline and energy corridor, if it were established, would have an impact on the Dene and the Inuit. So, the Inquiry has been to practically <sup>all</sup> of the native villages and settlements and the -- to find out from the people themselves what their attitudes may be.

Now, you have come here and have posed what I think you would characterize as a moral issue in urging the moratorium on any major development until the land claims of the native people have been settled and you say, I think this has emerged from your evidence that that is the essential foundation for enabling the native people <sup>to</sup> participate in the future development, whatever it may be, whatever form it may take here in the north.

Well, and you say that you are opposed to placing any time limit on the settlement of a land claim and the establishment of a means for the



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native peoples to be able to assert their own legitimate interest in northern development. I hope I'm doing something like rough justice to the submission you've made. Well --

WITNESS CLARKE: Pardon me.

Q Excuse me.

A When I was speaking about that moratorium notion, I was referring to the fact that it was difficult to pinpoint a time framework.

Q Yes.

A As distinct from being -- or as somewhat different from saying "opposed to".

Q All right, but what you're saying is that morally, and I want to make sure I understand you; that you're saying that morally it would be wrong to proceed with the construction of a gas pipeline and then an oil pipeline to establish an energy corridor unless the land claims of the native people had first been settled and they had been given the means to assert their own legitimate interests in northern development. Not the interests that we decide they may be entitled to assert, but the interests that they themselves feel they ought to be able to assert in what goes on here in the north.

Well, I hope as I say I'm doing rough justice to your proposition and you're really saying to us that's a moral issue, as I understand your evidence.

Now that, it seems to me confronts the whole question what are the attitudes of people in



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southern Canada and the United States toward northern development? I say the United States because one of the proposals before us is to establish an energy corridor for the transportation of Alaskan gas and oil to markets in the United States.

Now, that means that -- does it mean, let me ask you this, does it mean that the attitudes of people in southern Canada toward northern development have to be examined? Suppose that the Government of Canada were to adopt your position and were to say to southern Canada and it may be to the United States as well, if it were to come to that, "All right, we've decided to do the right thing by the native people of the north and that means that you may not have access to northern gas and oil, or as we say in the Inquiry, hydrocarbons, attempting to establish a veneer of authority in our discussions of these things. Now, suppose the Government of Canada were to say to people in southern Canada, "You may not have access to northern gas and oil until we have done the right thing by the native people of the north".

That might very well mean, we are told and Mr. Steeve's clients I think would take this position that we may see some running down of the industrial machine in southern Canada and maybe in the United States as well. We may have to<sup>do</sup> with just one automobile instead of two, those families that have two, we may have to make some changes in the way we live.

Now that -- what you're saying if



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you examine the consequences of it, entails a re-examination, it may be, by people in southern Canada and the United States of their attitudes toward the way they themselves live. It seems to me that if you take the consequences of your submission, to their logical conclusion, that's what you're saying and I just want to know if that is in fact what you are saying to us?



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A Perhaps I could begin.

I take it that's a question to the whole panel, Mr. Commissioner.

Q Yes, I am asking you  
to comment and if you -- take your time. I gather  
that -- Mr. Bell, that through problems of logistics  
that we do have the rest of the afternoon at the  
very least.

MR. BELL: Yes, sir.

A Perhaps I could begin  
my comments, Mr. Commissioner, by revealing a little bit  
about some of the conversations I have had with southern  
Canadians and the work that we have been doing in the  
south in the last number of months. To do so, I think  
it would be worthwhile pointing out that there  
are a number of questions being raised by southern  
Canadians as well.

There is a question too,  
of whether or not southern Canadians really have control  
over their life, their future. And I cite the example  
of the '73, 1973 Policy Report of the Department of  
Energy Mines, and Resources which stated that in the  
last 25 years our energy consumption in the south has  
multiplied three times over and it will multiply four  
times over in the next 25 years. Well, when you pose  
that to a number of, you know, thoughtful people in the  
south, they begin to ask the question, "Well, who makes  
those decisions? Who decides that for us? Why should  
our energy consumption multiply four times over in the  
next 25 years?" What I am saying is simply this, that  
I think that there are people in the south who are



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1 beginning to question whether or not they too have lost  
2 control over their future in terms of this question of  
3 energy and energy rates.  
4

5 Now, with respect to  
6 energy --

THE COMMISSIONER:

7 Q May I interrupt you for  
8 a moment and then you feel free to take your time, but  
9 let me just put it this way. It seems to me that most  
10 people who live in southern Canada who are consumers of  
11 energy would regard their own uses of energy as  
12 conscious decisions they have taken for themselves, and  
13 that is that the purchase of an automobile and then  
14 another one, the purchase of a television set, the  
15 purchase of a large home or the rental of a large home  
16 which uses, which requires a lot of heat. That it  
17 may be that the people that you have been talking to  
18 have made it -- it is important to them to re-examine  
19 how all of this came about. But to most people, I  
20 should think in southern Canada, they have adopted a  
21 lifestyle consciously and deliberately and they regard  
22 it as something that they have sought throughout their  
23 lives to attain. I want to make it -- I want to put it  
24 in this way. Are you saying to them, if you are being  
25 perfectly honest about the consequences of the policy  
26 you urge, you may not be able to continue to enjoy that  
27 lifestyle which you have throughout your working  
28 life time devoted your best efforts to achieving.  
29 You are asking people, it seems to me, you may be asking  
30 them to sacrifice something that they have regarded as



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1 important to themselves and with a notion of success  
2 in life to attain.

3 Now, I understand the  
4 point you are about to make and feel free to pursue it,  
5 but I think you should still meet the notion I have just  
6 put to you.

7 WITNESS BROWNSTONE: Your  
8 honor, with respect, may I? I think your statement  
9 assumes that we, up here, are somehow abstractions of  
10 reality in the south, that we are sort of above it; we  
11 are theorizing about reality in the south or projecting  
12 it or somehow. I would like to correct that --

13 THE COMMISSIONER: No, I  
14 didn't just mean --

15 A -- if it indeed dwells  
16 in your mind. I think we have responded as people living  
17 in southern Canada to what we have been hearing and  
18 listening to it in southern society -- that's a very  
19 bad phrase. And the statement Tony was making about the  
20 move towards questioning energy consumption, towards  
21 a conservative society, towards oh, discussions of  
22 no growth or limited growth, on very many grounds, not  
23 strictly in terms of the Mackenzie Valley problem but  
24 for other reasons. The reaction against consumerism,  
25 the whole discussion of where the so-called needs  
26 and consumption patterns arise, whether it is based on  
27 people's own preferences or something which is induced.  
28 These are major issues, I feel, that have arisen in  
29 terms of the Canadian culture, Canadian context and are  
30 international in scope. So I think one of the first



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1 points I would want to make in responding is that these  
2 are -- some of these values have been developing and are  
3 very prominent and significant in Canadian society  
4 generally.

5 Q Mr. Brownstone, I agree  
6 that those are absolutely vital questions and that  
7 many other people in Canada besides the members of this  
8 panel are concerned about them. I'm not unaware of that,  
9 but anyway carry on. I'm sorry.

10 WITNESS CLARKE: I think at  
11 the same time, Mr. Commissioner, there is a growing  
12 scepticism about the question of, is there an energy  
13 crisis or isn't there? And I don't want to, at all,  
14 you know, give a dramatic position on that whole question  
15 at this point but there is a lot of scepticism when  
16 for example three or four years ago, we were told by  
17 the energy industry that we had 923 years left of oil  
18 reserves and 392 years left of gas reserves and then  
19 of course, in the last couple of years, we have seen  
20 a complete face about in terms of those particular  
21 estimates.

22 You pose that to Canadians  
23 as you cross the country, as I have been, at least in  
24 the western provinces, in the last few months and people  
25 are darn upset about those kinds of things. The question  
26 is, "Who does determine? And what access to facts and  
27 access to information regarding energy supplies in this  
28 country seems to be so much in the hands of the energy  
29 industry that it makes it very difficult to get a true  
30 independent kind of position as to what the state of



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1 affairs is regarding the energy situation in this country.  
2 As you know, those particular facts in the -- were  
3 provided to the government in '72 and '73 by the  
4 Canadian Petroleum Association.

5 Q Well, we've -- that's  
6 come up here and --

7 A Right.

8 Q I have even taken the  
9 liberty of commenting upon it myself, so we know about  
10 it.

11 A Right. But the point is  
12 when you -- when citizens began to -- begin to examine  
13 those kinds of things then they begin to ask a lot of  
14 questions about the structure of our whole energy  
15 industry and policy in this country.

16 Now, whether, how widespread  
17 that is, I'm not prepared -- I'm not able to give an  
18 accurate comment on but the point is I think that those  
19 kind of questions are being raised and I think a lot  
20 more is going to be said about that.

21 MR. SCOTT: Isn't there perhaps  
22 another sacrifice that may be required in the event of  
23 a moratorium, Mr. Clarke, that you have been talking  
24 about? The services in the Northwest Territories, some  
25 of which are utilized by whites and some of which are  
26 utilized by natives and some of which are used by both,  
27 are substantially supported by tax dollars from  
28 southern Canada. Isn't there a risk that or isn't it  
29 right that into this equation, you have to put the  
30 proposition that southern Canadians may in the event of



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1 a moratorium, not feel the same kind of dollar  
2 obligation as they felt or have been induced to feel with  
3 respect to supporting services in the north. Now, there  
4 may be nothing wrong with that. Maybe you'll get rid  
5 of some services that people <sup>up here</sup> don't want anyway but  
6 on the other hand, it seems to me that there is that  
7 possibility. What do you say about that?  
8

9 WITNESS DRAIMIN: I was just  
10 going to say to reverse the situation, there is a  
11 tremendous amount of wealth right now which is being  
12 drained out of the Northwest Territories. I'm not  
13 exactly sure of the specific statistics on the amount  
14 of profit that Cominco makes out of the Pine Point mine,  
15 but I understand it to be quite substantial. That is  
16 only one of a number of mines that are now in production  
17 and there's other ones that they want to open up.

18 So, I mean, if you want  
19 to talk about the transfer of wealth, I think that  
20 most people would have to agree that there's more  
21 wealth leaving the Northwest Territories than there is  
22 coming in.

23 Q Well, you see, if you take  
24 me, and I'll only pursue this for one moment longer,  
25 but if you take me as your typical southern Canadian,  
26 my moral obligation to support the less successful  
27 economically in the Maritimes or in the Northwest  
28 Territories is (a) I hope moral but (b) is also  
29 dictated by the flow contra, whether it be of natural  
30 resources or as the Maritimers always say, having no



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1 natural resources, brains. What really troubles me  
2 is that if there were a moratorium in which basically  
3 the people of the north said to the people of the  
4 south, "You are not going to get it anymore for 10 or  
5 15 years," that might have severe or have radical  
6 implications for the north. They might be good or bad,  
7 but isn't that something that has to be put in the  
8 equation as well?  
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A I'm sure it has to be put in as an equation if that's the attitude of southern Canadians, if they're going to cut the tap off, because they feel affronted, I guess, in one sense that's their prerogative, but then you're saying that's the prerogative of the native peoples as well, to do the same, and I think in that sense when we're talking about here a situation of the native people wanting to protect their own culture and developing their culture, that they would take advantage of what they have here to develop themselves so maybe they wouldn't need any more handouts from the Federal Government. If for example, the Brotherhood of the Northwest Territories owned Pine Point Mine, it would be -- it seems to me a hell of a lot better off financially at least than it would if it didn't have control over that mine. I think there's possibilities there and I don't see it as a black and white situation in terms of if things are turned off, and that's the biggest problem that the people face. That isn't.

Q Well, let's just follow that one up by asking Father Menez, Father, you live fairly close to it, what is the impact, for example, of the Pine Point Mine on the people where you live, in light of this general discussion about development, of which Pine Point Mine is I presume in your area a significant current example?

WITNESS MENEZ: Well, as I  
a part  
said, in a report like that you want to be honest with the author of the paper and recognize it cannot be



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1 exact point by point, but when I was listening to it  
2 it seems to me you would change your course by your  
3 resolution and you know, FUNAI by Indian Affairs.  
4 You know the report would have been very much adapted  
5 -- very much a true for Fort Resolution. We got the  
6 resources, people knew about the lead and zinc, they  
7 use the lead for sinking their nets in water. It was  
8 known since the people were there, and Cominco  
9 moved in , let's say '65, '64, '63, and no, they didn't  
10 push the Indians on a reserve, but they ignored them. People  
11 were living there, that was their farm. They didn't  
12 have a patch of potatoes but they were raising what  
13 we call more or less fur, and there was a livelihood.  
14 They didn't have cattle but they had animals to look  
15 after properly, and Cominco moved in and they ignored  
16 them completely. There was no compensation, and this  
17 with the complicity of the government, <sup>FUNAI --</sup> I mean Indian Affairs,  
18 and you know, had my eye, I was there in '49 to '53 and  
19 you could see that coming, you know, prospectors. We  
20 had them coming from all over, from the top, from the  
21 bottom, and from underground, and to a point there was  
22 a chapter added to the Eskimo and Indian legends, strange  
23 people living in the background, you know, those pros-  
24 pectors or those guys <sup>working</sup> = around, and they don't  
25 consult with the people, they ignored them completely.  
26 They would walk on their dead body, and that's it.  
27 Those people have been moved out of there. That was  
28 their reserve, their farm. I could give you the name,  
29 Fabian, five of them, Lafferty, Bossley . I went  
30 over with a guy before living to be sure, Modest, Henri  
and so on.



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Altogether we counted about 12 families, about one hundred people making a living.

There's another aspect we forget about, the other, Pine Point is a town of 2,000 people or so, and they need on weekends what they call recreation facilities, and they have a tendency to consider any stream, any tree, any prairie, any body of water, any fish, as recreation activities when for the people they say livelihood, it's just like the Indians going south and saying, "Oh, there's a patch of potatoes, a nice place to pitch out your tent and have the kids to play on, " or go out yourself in the wheat. Recreation facilities, offered by white people, that's nice. It's the same, you see.

I'm not blaming anybody, I don't know if there are any Pine Point/ <sup>ers here.</sup> We are raised like that. The game law, game, it's a sport, you need rules for that.  
/Does that answer your question?

Q Well, it's a start.

A It's a start.

WITNESS BROWNSTONE: Your honor, I wonder if I could respond?

THE COMMISSIONER: Yes sir.

A To that question, I believe the question was in terms of the service benefits of development to northern communities. I don't live in the north. I took a drive around Yellowknife yesterday and looked at sort of the distributive consequences of development and investment and services in the community, and the native people's



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community was not at all a beneficiary of whatever improvements have been made in infrastructure in the Town of Yellowknife, ~~the~~ City of Yellowknife. Just on visual inspection, and this repeats itself in development site after development site, and it's not restricted to native people but it is more striking in the case of native people. The consequences of this, which may not have been observed in Yellowknife as yet, can be observed in a community like Regina, Saskatchewan, in which the apart from morals is entirely the community at large, the dominant community, suddenly feels it is being overwhelmed by the so-called Indian problem, which is a function, I think, of the maldistribution of development benefits, so-called.

So I wouldn't argue the case on moral grounds. I certainly wouldn't attempt to project the typical development pattern, some of which provides service benefits to those who are worst off in our society. The reverse is true, in community after community across Canada.

MR. STEEVES: Could I ask you, sir, as I understand what you've just said, what you see as the injustice is the fact that the indigenous people of the north will not share in the benefits of development. Am I interpreting you incorrectly?

A That's part of what I'm saying, yes.

Q So in that sense then you see development of the natural resources of the north as an inevitable process in history or economics,



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1 do you?

2 A I do not.

3 MR. STEEVES: I see. All right.

4 WITNESS MENEZ: May I answer

5 that? Development, it depends what you put behind.

6 If you take an example, in Fort Resolution we have

7 what we call a Developer Committee and they decided

8 if they want to make a go with a sawmill in Fort

9 Resolution they have to produce 15 million board feet

10 a year, and then you make a profit, you make money,

11 you become rich, you'll be able to improve the saw.

12 Now we are a sawmill that is based not on profit but

13 something to keep the people, let's say, occupied,

14 and make a living. They're not becoming rich. The

15 maximum is three million board feet, which means that

16 we have that communal industry going on for years and

17 years. 15 million cubic board feet a year means you

18 close the mill after five years of operation, or ten

19 at the maximum, and that's what they did on Fort

20 Chippewyn, was the same guy that came on. You see

21 that type of development approach --

22 Q There are two different  
23 kinds of development.

24 A Oh yes. Perhaps you  
25 could explain what you call by "development". You are  
26 questioning my point of view, so I question yours.

27 Q O.K., that's fair  
28 enough.

29 A But I'm sorry, Mr.  
30 Berger, I'm not here to ask a question.



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MR. STEEVES: That's why  
lawyers don't like this place. You are here to ask  
questions.

MR. SCOTT: The point you make  
with that example is that a development at Fort Resolu-  
tion that met what you perceived to be the standards of  
the southern industrial mentality <sup>would</sup> remove 50 million  
board feet in three years and then there would be no  
need for a mill.

A Yes , no trees left.

Q No trees left?

A Yes.

Q And therefore a more  
equitable local industry is one which paces that out.

A Certainly, and this is  
possible only if there is nobody at the end of the year  
to collect all the money, the profit, but leave it there.

Q All right. Well, one other  
question, Mr. Clarke, in the back of your paper in the  
studies there are two documents referred to that I  
don't think I'm going to be able to get a copy of  
without your help. The first is the document by the  
bishops and priests of the Brazilian Amazon Y Juca Pirama  
I think that's how that's pronounced perhaps -- and  
another bishops' document on the marginalization of  
people, and I wonder if at a convenient time you could  
provide me with a translated copy of both documents?  
I presume you must have had one yourself.



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WITNESS CLARKE: Oh yes, yes,  
most certainly.

MR. SCOTT: I'd appreciate it  
if you could mail that to me.

A We have one of the  
documents with us here and we'll mail the other one.

MR. SCOTT: Thank you very  
much, those are the questions I have.

THE COMMISSIONER: Yes, Mr.  
Rolfe?

WITNESS ROLFE: I just wanted  
to pick up on one point by you Mr. Commissioner about  
the status of southern Canadian opinion. I've had some  
experience in trying to raise the issues involved before  
this Inquiry with southern Canadians in the Province of  
Ontario and I would just reinforce what some other  
panelists have said that the southern Canadian opinion  
is not uniformly, by no means uniformly behind a rapid  
thrust in northern development for the sake of their  
own material benefit or whatever material amelioration  
it might bring to their lives but I think one of the  
most amazing things is that the whole question of what  
the opinion of what southern Canadians is is not clear.  
It's something invoked by many of the interested parties  
usually in favor of their own arguments, but there has  
been no real process I think to encourage popular  
participation amongst southern Canadian. I don't  
think that public Inquires alone like this Inquiry  
or like the National Energy Inquiry are sufficient to  
generate that kind of participation and yet a number of



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the plans or a lot of the planning for northern development for things like pipeline and highways have gone on without that kind of process of participation, that process of hearing from southern Canadians taking place so that you have a situation where in fact we don't really know what the masses in southern Canada feel on those issues and I think that some responsibility for that must fall on the shoulders of the governments and corporations involved and I think it should be something that certainly is encouraged much more than it has been in the past and something which should be taken into consideration before decisions are made and I find it literally amazing that the degree of planning for northern development and the implementation of those plans should take place without that kind of involvement of southern Canadians.

Q Yes, Dr. Clarke?

WITNESS CLARKE: Just to add to that, Mr. Commissioner, I think that one of the things we're finding increasingly is that many southern Canadians simply are not aware of all of the factors that are involved, I mean the basic factors involved as they affect their lives and it's shocking for example when you, as we read it two or three months ago as reported to the effect I think 15 to 17 trillion cubic feet of the delta gas will be -- is already committed to export to the United States and then you get the advertisements on television screen and so forth, saying we must rush to the north and develop those resources or things to that effect. I think we're seeing



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more and more people beginning to question this and certainly it should not be assumed by any stretch of the imagination that the national interest and what is the national interest is clearly understood and agreed to amongst southern Canadians.

Secondly, it should not be assumed by anybody, I don't think that the question of the development of energy resources in the north is only a question for, you know, is only a struggle that the native people are opposed to or involved in because it's a struggle that's becoming more and more clear to people elsewhere in this country.

Finally, I think some people are making the connection between some of their own understanding of what kind of pattern of resource development has occurred in their own provinces and regions which are not you know, unmatchable or unrelatable to the kinds of things that are happening in the north. So, these are just some observations that we've picked up by conversations with Canadians in the south.

THE COMMISSIONER: Well, to bear in mind that this Inquiry has heard from a great many white northerners and many of the white people who live here in the north have expressed the same concerns that you members of this panel have expressed. Practically, I suppose practically all of the priests and ministers who live in the villages among the native people have talked in something of the same vein as Father Menez has, and other white people have said that



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industrialization of the north is inevitable and the important thing is that northerners should participate, white and native should participate in time honored ways but maybe just before we excuse you, we could return for a moment to the question that I've put to you which no one has sought to answer plainly.

You see, Arctic Gas says that the delivery of gas from the Arctic to the mid-continent is essential in order to avoid developing an unhealthy state of affairs regarding the balance of payments and so forth and so on, based on the continuing and increasing importation of foreign oil, if that's the right way to characterize oil and gas; foreign energy.

Now without arguing about the question whether they're right or wrong which is not something that this tribunal, this Inquiry is going to be in a position to decide in any event, are you saying to people in southern Canada it may be necessary in order to do what is right by the people of the north for you to curtail your standard of living, for the gross national product to contract instead of to expand, for southerners to make sacrifices and what they will regard as sacrifices. Is that the position that you are prepared to take a stand on if it comes to that?

That's -- maybe I'm particularly dense, but it seemed to me that you didn't altogether come clean on that.

WITNESS CLARKE:

A Are you addressing the question to me?

Q Well, anyone who wants to



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A Do you want to start, and then I'll follow?

Q Bear in mind, I appreciate it very much the things you've had to say and they've been helpful to me and it's --

WITNESS MENEZ: I'm not now living in south so it's very difficult to impose my own choice, but I'll say of course, you know, because I'm afraid that more you find, more you'll, I think it's been the past the way of doing, the more you find things the more you have to find way to spend it so the first thing to do is restriction because it doesn't -- if we're going to adopt that attitude of restriction right now, the world is going to be found in the Arctic I suppose <sup>line sending it outside,</sup> there's a pipe/ is not going to keep up with the supply we need now but for the new ways invented in order to spend as fast as we can or sell as fast as we can, that oil coming from the Arctic that I think has been the tradition of the industrial world to produce and consume and produce and consume and restriction.

If I was a priest outside I would say it's a mortal sin to consume to much. Restriction would be a virtue.

Q Sorry, Mr. Brownstone or Dr. Clarke?

WITNESS BROWNSTONE: Well, first I would resist the notion of we are telling the southern people to they must make this or that sacrifice. I think we are part of a group which I can't define numerically of a substantial intellectual group in the



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south which is prepared to make that statement for itself and to extend it to the rest of Canadian society.

I think part of the problem is one exposure, to give people a meaningful choice, they obviously have to understand all the implication for themselves and for Canadian society as a whole.

I think the kind of process you're engaged in and we've engaged in in Oxfam for a long time now in our educational process is a means of really presenting reality to people in the south in a way which has been avoided by the way our structure and our social relations have operated. So, in a sense, we're engaged in a process not of telling people, but of exposing in a much more honest and open way the implications for all Canadians for this kind of development process.

My position will remain in front of this Inquiry that I'm not as pessimistic I don't think as others in terms of where peoples heads are at in the south. I think an enormous shift has taken place in the perception of people about the environment, about minorities, about poverty and other areas which doesn't make it a job of selling or convincing people or to engage in a sort of quasi-missionary action.

Our short-term experience with the Mackenzie Valley situation in the south has produced a very positive response based almost entirely on exposure of what is happening here and its likely consequences as we've heard and on people turning around and examining their own situation in the light of this



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sort of exposure.

I'm not denying for a moment that there are value positions, positions of doctrine in our society that are extremely powerful and significant. Slogans like balance of payment, national sovereignty, the sanctity of economic growth and so on pervade a lot of our perceptions and these mask any attempt to really get at the reality of development. So, I'm not minimizing that kind of problem. What I'm saying is that in terms of our own experience and I hope in terms of the experience of this Commission that exposure, discussion, open discussion is going to produce a somewhat different mentality with regard to development in the Mackenzie Valley and development in the south.



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1 WITNESS CLARKE: I did not  
2 mean that either to avoid the question because I think  
3 it's certainly been one that's been at the center of  
4 much of our work. I mean looking at those kind  
5 of concerns, but I think what we were trying to say is  
6 that a curbing of lifestyle is only one part of the  
7 picture but there has to be a fundamental reorganization  
8 of our economic and social structures to deal with  
9 the questions that we're really facing here, because  
10 it's just not enough to cut back on individual consump-  
11 tion. There's more to it than that that's at the center  
12 of industrial system that places demands upon those  
13 energy resources and in that context, I would like to  
14 just quote if I could the paragraph<sup>32</sup> of the Bishop's  
15 Labour Day message. I don't normally like to quote  
16 these things but this is going all across the country  
17 through audio-visuals, so people are hearing this and  
18 picking this up so, you know, it's getting out beyond  
19 the piece of paper into the -- in the form of an  
20 educational program.

21 "In the final analysis, what is required is  
22 nothing less than fundamental social change.  
23 Until we, as a society, begin to change our  
24 own lifestyles based on wealth and comfort;  
25 until we begin to change the profit-oriented  
26 priorities of our industrial system, we will  
27 continue placing exorbitant demands on the  
28 limited supplies of energy in the north and  
29 end up exploiting the people of the north  
30 in order to get those resources."



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1 Now, that's the conclusion  
2 that we reach in that document which was based upon the  
3 question of justice and the question of responsible  
4 stewardship of resources.

5 WITNESS DRAIMIN: I just  
6 wanted to make one statement which was that I don't think  
7 that the choices that you are outlining are choices  
8 that just have to deal with Mackenzie Valley. And the  
9 situation of Mackenzie Valley might put Canadians in  
10 a position of coming to grips with social reality,  
11 the political economic reality of this country to make  
12 some of those decisions sooner than they might have.  
13 But they deal more broadly with what's happening  
14 throughout the world.

15 We just talked about  
16 Brazil, for example, and the situation of exploitation  
17 of the mineral resources of that country whereas if there  
18 was a similar situation that would happen in Brazil, it  
19 would not just affect the citizenry of Brazil but also  
20 all the consuming nations that are, at this point, getting  
21 the benefits of the extraction of those raw materials.

22 I think that it would  
23 be a mistake then just to isolate the situation and  
24 put it in a context solely of that of the Mackenzie  
25 Valley and I think that there's a whole moral and  
26 social economic kinds of questions that Canadians have  
27 to ask themselves of this society in what direction  
28 that they want to turn. And if in making those choices  
29 inappropriately, they don't do justice to the situation of the  
30 Dene people. That's only one of the particular



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1 kinds of consequences of the choices that they have to  
2 make and I think that the story of these kinds of  
3 choices and the kind of social change that we might  
4 want in this country cannot just be limited to that and  
5 I think it's broader questions and -- but I do think  
6 that on one hand, that this has offered Canadians one  
7 form of -- one situation which to broach those kinds  
8 of questions in a meaningful way and I look forward  
9 to the trip that you do make to the south that people  
10 might have an opportunity to do that.

11 THE COMMISSIONER: Well, any  
12 further questions? Before we adjourn, let me just  
13 say that Mr. Hollingworth raised the question with the  
14 panel of the possibility of a guarantee being extended  
15 by the government of Canada to cover any borrowings that  
16 Arctic Gas or Foothills might make depending on which  
17 one were to build this pipeline if indeed it were to  
18 be built. It occurred to me that counsel may want to  
19 consider and certainly, I don't want you to say anything  
20 about it now but you may want to consider when we come  
21 to the final submissions and your arguing about terms  
22 and conditions that might be imposed if a pipeline were  
23 to be built, on the whole question of the bearing that  
24 a guarantee would have on the enforcement of those  
25 terms and conditions; that is, whether there ought to  
26 be some means of enforcing those terms and conditions  
27 that would ensure that any federal agency charged with  
28 that responsibility would be free to do so, notwithstanding  
29 any federal liability that might be incurred under a  
30 guarantee of the borrowings if the construction schedule



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were to be held up in order to achieve appropriate  
enforcement of social and environmental safeguards.

At any rate, it is  
something that counsel may want to consider and when we  
get to final submissions, say something about and I  
thought I would mention it now before it slipped from  
my mind.

Well, what do you propose  
for tomorrow?

MR. BELL: I would suggest  
tomorrow, sir -- I have mentioned this to Mr. Scott but  
not to any of the other counsel that we not sit  
tomorrow morning, that I assemble my witnesses tomorrow  
afternoon and we sit in the afternoon and the evening  
tomorrow.

THE COMMISSIONER: Well, one  
o'clock tomorrow then.

MR. BELL: Yes.

THE COMMISSIONER: Should I  
excuse this panel?

MR. BELL: Yes, I have no  
re-direct.

THE COMMISSIONER: Pardon me?

MR. BELL: I have no further  
questions of them.

THE COMMISSIONER: All right.  
Well, thank you very much Father Smith and Father Menez  
and Dr. Clarke and Mr. Draimin and Mr. Brownstone and  
Mr. Rolfe. I think we have all gained from your presence  
here today and certainly speaking for myself, I



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1 appreciate very much your observations and your  
2 willingness to discuss these things in an informal  
3 way with counsel and with me.

4 So thank you very  
5 much for your attendance and perhaps we will see you  
6 again.

7 (WITNESSES ASIDE)

8 THE COMMISSIONER: Well, we'll  
9 adjourn till 1:00 tomorrow.

10 (PROCEEDINGS ADJOURNED TO APRIL 27, 1976)

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M835  
Vol. 145

AUTHOR  
Mackenzie Valley pipeline inquiry:

TITLE  
Vol. 145 April 26, 1976

DATE OUT BORROWER'S NAME

JUN 14 1976 - used - ref.

347  
M835  
Vol. 145













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